Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Innotech Aviation Limited,

complainant,

and

Unifor; Innotech Aviation Limited Employees' Association,

respondents.

Board File: 31503-C
Neutral Citation: 2018 CIRB **884**
June 7, 2018

The Canada Industrial Relations Board (the Board) was composed of Ms. Annie G. Berthiaume, Vice-Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*).

Hearings were held in Montréal on May 17 and 18, 2017, and September 6, 2017.

Appearances

Ms. Marie-Hélène Jetté, for Innotech Aviation Limited;

Ms. Catherine Saint-Germain, for the Innotech Aviation Limited Employees' Association and Unifor.

I. Overview and Proceedings Before the Board

[1] On January 19, 2016, the Board received a complaint of unfair labour practice filed pursuant to section 97(1) of the *Code*, alleging violation of sections 95(a), 95(b) and 96 of the *Code*.

[2] Innotech Aviation Limited (Innotech or the employer) alleges mainly that Unifor substituted its authority for that of the Innotech Aviation Limited Employees' Association (the Association)—which is the certified bargaining agent in this matter—by usurping the latter's prerogatives

through a service agreement between the two unions in November 2014 (the 2014 Agreement) and a second agreement in April 2016 (the 2016 Agreement). According to the employer, the service agreements in question constitute a complete delegation of the Association's powers to Unifor. Innotech argues that Unifor violated the certification provisions of the *Code* by, among other things, using the Unifor logo and adding "Local 2410 Unifor" (translation) to the Association's name in various communications with its members. According to Innotech, the Association is in the same position as any other duly certified Unifor local, while it is not a "Unifor union" (translation). The employer views these actions as a tactic used by Unifor to force the employer to bargain collectively with it and to generate confusion among the bargaining unit members concerning the real identity of their bargaining agent. Innotech argues that such a delegation of powers constitutes an unfair labour practice to the extent that Unifor becomes the *de facto* certified bargaining agent without having had to follow the process set out in the *Code*, thus circumventing sections 24(2) and 43 of the *Code*.

[3] Following the request by the Association and Unifor (the unions), the Board issued two confidentiality orders pursuant to section 22(2) of the *Canada Industrial Relations Board Regulations, 2012*, regarding the 2014 and 2016 Agreements (Board order nos. 832-NB and 887-NB). However, those confidentiality orders were lifted with the consent of the unions on the last day of the hearing.

[4] Following the case management teleconference (CMT) held on September 12, 2016, the Board requested from the parties, among other things, submissions on the nature of Unifor's commitment to the Association and on the two precedents deemed to be relevant in this case, namely, *Airtex Industries Ltd*., [1990] Alta.L.R.B.R. 509; and *Yukon Energy Corporation*, 2001 CIRB LD 377. One of the purposes of that information request was to determine whether it would be necessary to hold a hearing to deal with the complaint, which was the case, considering the facts at issue.

[5] The hearings in the present complaint were held on May 17 and 18, 2017. As the Board had informed the parties, the scope of the hearings was limited to the contested evidence related to the nature of Unifor's commitment to the Association under the service agreements at issue. Since the parties had not been able to present all of their evidence, a third hearing day took place on September 6, 2017.

[6] On June 20, 2017, while the hearings were still underway, the employer filed an application for an interim order pursuant to section 19.1 of the *Code* to suspend the raid period or "open" period which was to begin on July 1, 2017. The employer alleged that it was necessary to suspend the "open" period set out in section 24 of the *Code* for the filing of certification applications because otherwise, according to the employer, Unifor would benefit from the unfair labour practices alleged in this file to obtain its certification, and this complaint would become moot.

[7] The Board dismissed the application for an interim order on June 30, 2017, in a decision with reasons to follow (see *Innotech Aviation Limited*, 2017 CIRB LD 3823). The "open" period ended and no certification application was filed by Unifor or by another union. The reasons for decision were issued on October 27, 2017 (see *Innotech Aviation Limited*, 2017 CIRB 862).

[8] The Board heard four witnesses during the hearings in the present matter. The employer called Mr. Nicolas Fragassi, Innotech's Vice-President of Operations, and Mr. Alistair Price, Vice-President of Human Resources, for the employer. The unions called Mr. Steve Boucher, President of the Association, and Mr. John Caluori, Unifor's National Representative at the time the relevant facts of the case occurred. Although the unions had called Mr. Boucher and Mr. Caluori as witnesses, the employer informed the Board that it also intended to examine them. The Board thus heard the witnesses in the following order: Mr. Fragassi, Mr. Boucher, Mr. Caluori and finally Mr. Price; the employer examined each witness first.

[9] The Board does not intend to detail the evidence of each witness heard. Instead, these reasons will summarize the relevant facts of the case and, as required, will refer to the testimony. The Board will also not reproduce each exhibit entered as evidence. Since this file has evolved over time, the Board has considered the most recent positions of the parties, namely, those presented at the hearings.

[10] Having considered all of the evidence on file, the testimony heard, and the parties' final submissions, the Board concludes that there was no violation of sections 95(a), 95(b) and 96 of the *Code*. Consequently, the Board dismisses the employer's complaint. These are the reasons for the Board's decision.

II. Facts and Testimonies

A. The Parties

[11] Innotech is a division of I.M.P. Group International Inc. (I.M.P.), which performs maintenance and repairs of business aircraft and manufactures cabinetry for business aircraft.

[12] The Association is a union certified by the Board since June 29, 1993, pursuant to order no. 6250-U, to represent:

> all employees of Innotech Aviation Limited in Dorval working in engineering, production and sales, **excluding** foremen, supervisors and those above, office personnel, handymen, stress and avionics engineers.

[13] The Association has between 250 and 300 members spread among three facilities around the Pierre Elliot Trudeau Airport, more specifically, a maintenance and finishing hangar, a cabinetry workshop and an aircraft painting workshop. Its executive committee is made up of a President, Vice-President, Treasurer and Secretary; representatives are also assigned to various departments of Innotech that are covered by the certification.

[14] The Association and Innotech are bound by a collective agreement signed on May 5, 2016, for the period from October 1, 2014, to September 30, 2020.

[15] Unifor is a national union resulting from the merger between the Canadian Auto Workers Union and the Communications, Energy and Paperworkers Union of Canada. Unifor now has over 300,000 members in various sectors of the Canadian economy.

B. How Unifor's Locals Work

[16] In his testimony, Mr. Caluori explained Unifor's structure to the Board, more specifically, how its duly certified local unions work.

[17] Unifor is composed of various local unions that represent one or several bargaining units. Members of those duly certified local unions are members in good standing of Unifor. Every local union is assigned a local number; Mr. Caluori explained that this is done solely for administrative purposes, among other things, to manage union dues. He specified that the local unions were not obliged to use their "numbered" local's name or Unifor's name in their communications that were not administrative in nature. However, Mr. Caluori considered that there was some pride in

being part of Unifor, which made the use of those names frequent. In addition, local unions are able to own some assets, for example, a bank account and office supplies and equipment.

[18] Mr. Caluori explained that duly certified local unions are subject to Unifor's National Constitution. Without listing all of the articles of the Constitution filed in evidence, local unions must, among other things, comply with the Statement of Principles (article 2), Unifor's objectives (article 3), the Code of Ethics and Democratic Practices (article 4), the rights and responsibilities of members and rules for participating in the governance of Unifor (article 5), voting procedures for votes and elections at conventions (article 6) as well as national dues of 0.735% and regional dues of 0.0135% for representation services and the Quebec Council (article 16). They must also follow the rules regarding the responsibilities of local union officers and the rules for the auditing of financial records and establish various Standing Committees (article 15). Rules for the supervision and reorganization of local unions (article 15) and for collective bargaining (article 17) are also provided.

[19] In his testimony, Mr. Caluori explained that the national representative of Unifor is in some ways the "liaison" (translation) between the local union's elected officers and Unifor's national structure. He or she is responsible for providing some Unifor services to local unions, including representation services for grievance arbitration and sometimes at labour relations committee meetings, as well as collective bargaining services. During collective bargaining, the national representative may act as a spokesperson and sometimes draft the demands presented by a local union; the local union's president may also take on this role, however, and then the national representative's role is limited to giving strategic advice and to ensuring that the law and the bargaining rules set by Unifor are followed. The extent of local unions' autonomy depends on their level of capability and their experience. Ultimately, local union members vote and decide on offers without being obliged to follow the national representative's recommendations. In labour relations committees, the representative's role is dependent on duly negotiated collective agreements. Furthermore, although the national representative normally acts as a representative for grievance arbitration, local unions are free to use other representation services. The national representative may also be asked to draft grievances. Various additional services are also provided to local unions if they wish to use them, including a service that will cover the various costs related to arbitration and representation services for injured workers.

C. Background to the Service Agreement of November 7, 2014

[20] The Association and Innotech were bound by a collective agreement which expired on September 30, 2014. On or about November 7, 2014, a service agreement, the 2014 Agreement, worded as follows, was concluded between Unifor and the Association:

> **PREAMBLE**
>
> The objective of this service agreement is to enable the Union to become more familiar with Unifor and to promote future unionization.
>
> **THE PARTIES HAVE AGREED AS FOLLOWS:**
>
> 1. The Union undertakes to comply with Unifor's Constitution and by-laws.
>
> 2. The Union undertakes to terminate any other contract or commitment in effect that may exist between it and any consultant or consulting firm, lawyer or external law firm.
>
> 3. The Union accepts that the service agreement comes into effect at the time of signing and for a period of up to one year.
>
> However, should the negotiations for renewing the collective agreement which currently binds the Union and Innotech Aviation not be completed when this service agreement expires, the parties agree to extend this service agreement for the time necessary to complete the renewal of the collective agreement.
>
> 4. For the duration of the service agreement, the name of the Union shall be Innotech Aviation Limited Employees' Association; Unifor Local 2410.
>
> 5. As described in article 16 of the Unifor Constitution, the Union agrees to pay Unifor union dues of 0.735% of regular wages with respect to regularly scheduled hours. Excluding any other premiums.
>
> 6. As stated in article 10, paragraph 10, of the Unifor Constitution, the Union agrees to pay Unifor a levy of 0.0135% of regular wages. Excluding any other premiums. The levy will be remitted by Unifor to the Unifor Quebec Council.
>
> The Union keeps its full decision-making authority with regard to establishing the dues to be paid by its members in addition to those set out in paragraphs 5 and 6.
>
> Should the Union decide to increase dues above those set out in paragraphs 5 and 6, the increase in dues remains the exclusive property of the Union.
>
> 7. (a) Dues are paid on a monthly basis.
>
> (b) The first payment of dues to Unifor and to Unifor's Quebec Council will be made one month after the date of signature thus covering the month that will have just ended.

8. All funds and property belonging to the Union remain the exclusive property of the Union.

9. Unifor, in turn, undertakes to provide the Union with all the services normally provided to its members, except the right to vote at the Unifor Convention and at the Quebec Council.

10. Unifor undertakes to provide, at its expense, collective bargaining training for the Union's current officers as well as steward training to the current stewards as soon as possible.

11. This agreement is binding upon current and future officers of the Union and Unifor.

12. The Union's officers and stewards undertake to recommend to their members to vote for this agreement.

13. At the end of this agreement, the current and future officers and stewards of the Union undertake to recommend to their members to vote in favour of a merger between the Union and Unifor.

(translation)

[21] In his testimony, Mr. Boucher described the context in which the 2014 Agreement was signed. The collective agreement in force at the time expired on September 30, 2014, and the Association's executive committee, newly elected in the summer of 2014, was preparing to begin negotiations with the employer. A disagreement about the hours of leave for union business, deemed excessive by the employer, led to the filing of grievances on behalf of the President and Vice-President of the Association. At the start of negotiations, given the time needed for the negotiations and following the advice of an external lawyer who advised the Association from time to time for about 15 years, the decision was made to approach major unions in order to retain the services of a more experienced union. Mr. Boucher explained that, after approaching other major unions, he realized that Unifor was the certified bargaining agent for Innotech's sister companies—IMP Aerospace and Defence, an Operating Unit of IMP Group Limited in Halifax, Nova Scotia, and Cascade Aerospace Inc. in Abbotsford, British Columbia—but also other companies in the aviation industry. The discussions with Unifor initially centred on a potential affiliation, but after checking in with the Association members, its executive committee instead decided to propose a service agreement so that the unions could get to know each other and, if the experience was positive, the option to affiliate with Unifor would eventually be given to the members. The draft service agreement and the Unifor Constitution were sent to the Association's external lawyer so that he could ensure there were no inconsistencies between the Association's constitution and by-laws and Unifor's Constitution. On November 1, 2014, the Association held a general meeting during which Unifor and the draft agreement were

introduced. The Association members voted in favour of the 2014 Agreement, which was eventually signed on November 7, 2014.

[22] According to Mr. Boucher, the Association members did not become members of Unifor under the 2014 Agreement. He explained that the goal of the agreement was to “join a service” (translation) and that Association members understood that they were still members of the Association and not of a duly certified Unifor local. However, he acknowledged that, under paragraph 1 of the 2014 Agreement, the Association had to comply with Unifor’s ideology, namely, articles 2 and 3 and “probably 4” (translation) of the Constitution stating Unifor’s guiding principles.

[23] Mr. Boucher explained that he and other members of the Association’s executive committee had the opportunity to take part in Unifor’s National Convention and Quebec Council in 2015, but only as observers, that is, without having the right to vote on what was being discussed. Mr. Caluori specified that you had to be a member in good standing of Unifor under article 5 of the Unifor Constitution to be able to vote and to run for office. Thus, none of the recommendations voted for during the Convention and the Quebec Council were applicable to signatories of service agreements.

[24] For the duration of the 2014 Agreement, and for purely administrative purposes, the Association also had to call itself “Unifor Local 2410,” under paragraph 4 of the 2014 Agreement. Explaining that it was his understanding that a Unifor number was needed purely for administrative purposes, Mr. Boucher specified that “2410” was actually the Association’s telephone extension number. Mr. Boucher specified that the executive committee members ensured that the name of the Association was still used to establish a distinction, hence the name that was selected: “Innotech Aviation Limited Employees’ Association; Unifor Local 2410” (translation). He explained that Unifor had never made any specific requests regarding the use of the name in the various communications sent to members. Mr. Boucher said that this initiative of the Association’s executive was taken merely to let their members know about the “service” (translation) the Association had obtained and for which the members were paying.

[25] Mr. Caluori also testified about the content of the 2014 Agreement. As Unifor’s National Representative, he was the one responsible for providing services to the Association and for creating the conditions for promoting the planned merger between the two unions. He first stated that he had had to apply other similar service agreements in the past. He indicated that this type

of agreement gave a union the possibility to “shop” (translation) for Unifor’s services and to get to know it, with the ultimate goal of merging or of obtaining a future certification during the “open” period or as part of a “friendly” raid. He indicated that the clause relating to compliance with the Unifor Constitution and by-laws was not specific to the 2014 Agreement and had limited scope, unlike that which applied to Unifor’s duly certified locals. The Association had to comply with articles 2, 3 and 4 for general principles governing Unifor, article 10 in principle, given the required dues, article 16 with respect to union dues and paragraph 17(c) for the rules governing the strike and defence fund. Mr. Caluori also specified that the purpose of the exclusivity of services clause set out in article 2 of the 2014 Agreement was simply to ensure that Unifor is not held liable for fees ultimately paid to external advisors or lawyers. In addition, he stated that the 2014 Agreement explicitly provided for a merge procedure, and that, consequently, there was no intention to raid at the time. Mr. Caluori specified that the Association members were not members in good standing of Unifor’s authorities, namely, the National Convention and the Quebec Council. However, he acknowledged that Unifor’s injured workers service, which is an ad hoc service, is also available to associations bound by service agreements if they wish to participate in it.

[26] The employer was informed of the 2014 Agreement in November 2014. Mr. Price indicated that he had received a call from Mr. Caluori, who informed him that a service agreement had been concluded between the unions and that he would now be leading collective bargaining, everything involving grievance arbitration (third-level grievance proceedings) and some other business. However, Mr. Caluori refused to provide Mr. Price with a copy of the 2014 Agreement. Mr. Price did not ask more specific questions regarding the nature of the services provided at the time. Indeed, he did not seek to find out whether other services could be provided by Unifor. Mr. Price testified that, to his knowledge, Unifor’s Quebec director was also going to call Innotech’s President to inform him about the 2014 Agreement. Mr. Fragassi was informed about it during the same period by means of an electronic “Google” notification on his computer. The report of Unifor’s Quebec director, prepared for Unifor’s Quebec Council from November 28 to 30, 2014, included the following information:

> We have been certified for about ten new groups and recruited over 800 new members. Among these new members are 300 from the Innotech company with whom we have concluded a service agreement. ...
>
> (translation)

D. Progress of Collective Bargaining and the Employer's Concerns Regarding the Content of the 2014 Agreement

[27] Following the signing of the 2014 Agreement, Mr. Caluori visited the employer's facilities. He described the visit as being "very cordial, very respectful" (translation). Mr. Price and Mr. Fragassi accompanied him. A little while later, Mr. Caluori told the employer that collective bargaining would begin only after the grievances regarding leave for union business were resolved. Meetings were scheduled for December 17 and 18, 2014. Mr. Price explained that, at the employer's request, the Association's executive committee members attended the meeting on December 17, 2014, without Mr. Caluori. The employer wanted to get clarification regarding Unifor's exact role with the Association. Mr. Price indicated that he had received the desired clarification to the extent that he was told that Mr. Caluori would be responsible for collective bargaining and arbitration issues and that the 2014 Agreement was valid for one year. Services provided in relation to compensation claims for workplace accidents may have been alluded to. Communications regarding collective agreements had to also be sent to Mr. Caluori since he ensured liaison with the Association's executive.

[28] The discussions surrounding the resolution of grievances finally began the next day, on December 18, 2014, ultimately leading to an agreement between the parties. The terms of the settlement were negotiated with Mr. Caluori, in the presence of the Association's executive committee members. The settlement documents between the Association and Innotech were ultimately finalized by the employer and signed on February 5, 2015, by Mr. Price, Mr. Caluori and the members of the executive concerned.

[29] A memorandum of agreement was concluded in regard to the grievances, and on December 18, 2014, the Association gave the employer a copy of the list of union demands for the negotiations. The cover page of the list read "Innotech Aviation Limited Employees' Association (Local 2410)" and showed the Unifor Quebec logo. Dates were also proposed to continue collective bargaining. Mr. Price and Mr. Fragassi indicated that it was the first official document that they had seen that had those words on it and the Unifor logo. Mr. Boucher stated that the union demands had all been thought of and prepared by the Association's executive committee during the summer of 2014, but that Mr. Caluori had assisted with making the demands concise and with the list's layout at Unifor's offices. Mr. Boucher added that Mr. Caluori had been "in shock" (translation) after reading the demands formulated by the Association.

[30] At the same time as the collective bargaining process began, Unifor's presence started to become more apparent through various forms of display. Mr. Fragassi and Mr. Price stated that the Association members wore Unifor pins and that members of the Association's executive committee used Unifor pins, bags and notebooks. Unifor's logo was also put on the door of the Association's office. Some employees were also wearing red Unifor pins. Mr. Price specified that this created a workplace safety risk and was not part of Innotech's uniform. Mr. Boucher clarified that, even though members would have liked some Unifor accessories such as jackets when the situation with the employer was more difficult, the Association's executive wanted to avoid "adding fuel to the fire" (translation), in order to conclude a collective agreement as soon as possible. Mr. Price confirmed, however, that no disciplinary measures were imposed by the employer for reasons related to this type of display or demonstration.

[31] Following the 2014 Agreement, the Association also began posting communiqués and invitations to general meetings for their members to keep them informed about the collective bargaining. From November 1, 2014, to April 9, 2016, seven meeting notices were posted. Three of those notices had the Unifor logo. As for communiqués, about 17 were posted on various bulletin boards of the Association in the employer's facilities between December 19, 2014, and March 30, 2016. All of the communiqués except one had the words "Innotech Aviation Limited Employees' Association, Unifor Local 2410" and the Unifor logo on them. They were drafted by Mr. Boucher with the help of the members of his executive committee, and Mr. Caluori was called in from time to time to reread them so that certain details were not forgotten. One of the communiqués, dated January 27, 2015, and dealing with the efforts to resolve the grievances on leave for union business, read as follows:

> ... Either [Innotech] will not accept our decision to join the Unifor union and try to provoke us or it will panic faced with the fact that we are now better organized to defend our members as we have demonstrated by filing a grievance challenging the non-compliance with the agreement regarding bonuses for those who worked during the Holidays. ...
>
> (translation)

[32] Mr. Boucher acknowledged in his testimony that the words chosen to describe the 2014 Agreement in that communiqué could confuse the reader, but he specified that there was no ambiguity for the members. In this regard, he explained that the members knew that they had voted in favour of a service agreement without affiliation. He indicated that some members and

union representatives had had additional questions when they saw the words “Unifor Local 2410” appear in 2014, but he said that the Association’s executive committee members held a meeting with the union representatives and discussed with the members concerned in order to answer those questions. In essence, Mr. Boucher explained that he had taken that initiative for the members. The message was that the Association, and therefore the members, paid for a service provided by Unifor and that the Association wanted that service to be visibile, the goal of which was to show that it had obtained support. Mr. Boucher stated that the members understood quickly.

[33] It was in January 2015 that the words “Innotech Aviation Limited Employees’ Association, Unifor Local 2410” began appearing in the electronic signatures of the members of the Association’s executive committee.

[34] In his testimony, Mr. Price indicated that he had had discussions with Mr. Caluori about Unifor’s presence during the negotiations. The first meeting took place on December 17, 2014. However, Mr. Caluori attended only on the second day, that is, December 18, 2014. Mr. Price explained that he considered that there was confusion and “misrepresentation” (translation) regarding Unifor’s role and that this obstructed his work insofar as I.M.P.’s senior management questioned Unifor’s intentions and its desire to obtain certification. According to Mr. Price, the employer was concerned about the fact that Unifor “was going through the back door.” He said that Mr. Caluori considered that he had the right to be there. Mr. Price testified that Mr. Caluori had explained to him that he was the Association’s spokesperson. Thus, he advised Mr. Price to send him all communications intended for the Association.

[35] On April 24, 2015, after several negotiation meetings, Mr. Price sent Mr. Boucher an e-mail telling him that he had noticed that Unifor’s logo was on a communiqué to the members instead of the Association’s logo. Mr. Price asked Mr. Boucher to clarify the nature of the 2014 Agreement, noting that it was his understanding that the Association had only concluded a service agreement for one year for Unifor to assist it with negotiations and grievances. Mr. Boucher clarified that it was merely an error, which had been corrected, and attached a new document. Mr. Price said that on April 27, 2015, he was confused because he saw Unifor’s logo on the new attachment and the words “Local 2410.” He then reiterated his request for clarification, and one more time on May 5, 2015. On May 11, 2015, he also wrote an e-mail to

Mr. Caluori to ask his question again and announce that negotiations would be suspended until he received the information requested:

> John,
>
> I'm writing to inform you that negotiations are suspended until we have formal, written confirmation of Unifor's relationship with the Association.
>
> At the present time Unifor is being represented as the bargaining agent of the Innotech Association employees in the absence of legal certification. Until we receive written confirmation from the Association as to the nature of the relationship with Unifor we will not permit you or another Unifor representative to be present at the negotiations.

[36] On May 11, 2015, Mr. Caluori replied to Mr. Price and reiterated the information on the nature of the 2014 Agreement that he had given him in the fall of 2014:

> Alistair,
>
> After 13 days of negotiation meetings, you are now making this request? We thought it was clear what kind of relationship Unifor and the Association have, after we told you on our first meeting in fall of 2014.
>
> Nonetheless, I will reconfirm, that we have a service contract with the Association to represent them in negotiations and grievance administration and all other services we may provide.

[37] A communiqué was also sent to the Association members to explain to them the situation regarding the employer's information requests. The employer's requests were described as follows:

> ... In our view, this is an attempt to sabotage our potential future association with Unifor. ...
>
> (translation)

[38] On May 13, 2015, Mr. Price confirmed the renewal of collective bargaining, telling the Association, however, to stop implying in its communications and all other forms of representations that it was affiliated with Unifor:

> John and Steve,
>
> Thank-you for your emails confirming that Unifor has formally contracted with the Innotech Employees Association to provide assistance during the current collective bargaining process. Based on these representations the Company will return to negotiations as scheduled next Wednesday, May 20th at 8:30am.

> However, IMP requests that the Association cease and desist all communications and other representations which suggest it is a member or affiliate of Unifor Local 2410, including, but not limited to, the use of Unifor letterhead or signature blocks.

[39] The negotiations continued, and the Association refused to follow up on Innotech's cease and desist letter. The Association continued to call itself "Innotech Aviation Limited Employees' Association, Unifor Local 2410" and to use Unifor's logo. Mr. Caluori acted as the main spokesperson for the Association. Mr. Price confirmed that Mr. Caluori often had private meetings to consult with the Association and did not immediately take a position when he was sitting at the bargaining table.

[40] On June 10, 2015, Mr. Price sent another cease and desist letter that the Association did not comply with. The letter read as follows:

> Further to our discussions and communications, I am writing to formally reiterate our concern that Unifor is misrepresenting its legal capacity to our company and its employees. The Innotech Employee Association continues to represent itself as Local 2410 of Unifor with the knowledge and active support of Unifor. Despite previous requests we have not received any notification of the certification of Unifor as the exclusive bargaining agent of our employees. We have not received any evidence of the Association or Unifor's legal capacity to represent itself as Local 2410 of Unifor. Therefore, in the absence of compliance with requests to be provided with evidence of legal capacity, we hold Unifor and the Association jointly and severally responsible for all consequences of this unlawful action.
>
> We continue, on a wholly without prejudice basis, to negotiate in good faith with the Innotech Employees Association to achieve a new Collective Agreement and we ask that you govern yourself accordingly.

[41] On December 20, 2015, 93 percent of Association members rejected the employer's collective bargaining offer. On December 24, 2015, the employer sent a final cease and desist letter to the Association and Unifor, this time signed by Innotech's Senior Vice-President, accusing them of misrepresentation and unfair practices. The letter stated the following:

> We write further to the issue that we have raised with both the Employee Association (the "EA") and Unifor since the Spring of 2015; that is, the continued misrepresentation of the EA as Local 2410 of Unifor. Despite repeated requests from the Innotech-Execaire Aviation Group ("Innotech") both the EA and Unifor have continued this misrepresentation which is viewed by Innotech as coercion and an unfair labour practice. Innotech acknowledges the EA's rights to retain a third party to assist it in bargaining; however, the relationship between the EA and Unifor has materially over-reached the acceptable boundaries of this third party representation and must immediately conform to the appropriate limitations of such a third party bargaining relationship.
>
> While Innotech recognizes the rights of its employees to organize pursuant to the *Canada Labour Code* (the "Code") any such organizing attempt by Unifor must take place in

> accordance with the Code. Innotech will not acquiesce in Unifor exceeding its authority as a third party for the authorized bargaining agent. We further understand that Unifor has been retained by the EA to assist it in bargaining, Unifor is merely a third party retained by the EA on this basis and is not certified to represent EA employees in any other capacity and that the agreement expired in November 2015. Accordingly, Innotech demands that Unifor immediately cease and desist in such behaviour and that the EA take the following steps:
>
> > • issue a clarification to all EA members that the EA is not a local of Unifor as has been misrepresented in EA communications; and
> >
> > • confirm that the EA remains the certified bargaining unit of its employees with respect to all matters involving Innotech and that the EA and not Unifor will be communicating with its members on a go forward basis.
>
> We trust that our position in relation to the foregoing is clear. Should we not receive a copy of the correspondence from the EA to its employees which contains the above points on or before **4:00p.m.EST** on **Thursday, January 7th, 2016**, we will take steps to file appropriate applications to the Canada Industrial Labour [*sic*] Relations Board.
>
> We hope and expect that this will not be necessary and that the EA and Innotech can conclude their current conciliation in an efficient and good-faith basis to allow the employees and the company the ability to weather the difficult economic storm that they currently find themselves in.

[42] On January 6, 2016, counsel for Unifor replied to the cease and desist letter stating that it was unfounded, and on January 11, 2016, the Association sent a communiqué to its members to inform them of the situation as follows:

> ... Faced with the Company's new unjustified summons and as they did with their representation in our other files, Unifor's legal department was forced to respond through legal means reiterating that our members are well aware of all the details of our service contract and that at no point have we or will we try to trick them in any way regarding their representation.
>
> (translation)

[43] The present complaint was filed on January 19, 2016. Mr. Caluori explained that he had asked the employer whether the complaint meant that collective bargaining was suspended until the Board renders a decision. Mr. Price said that the negotiations would continue since his intention was to conclude a collective agreement.

[44] On February 20, 2016, another offer by the employer was presented at the Association's general meeting. Mr. Boucher explained that, after long negotiations and conciliation proceedings, the members of the Association's executive committee considered that the negotiations were no longer progressing. They therefore asked the employer to submit an offer

so that they could present it to the members. Mr. Boucher chaired the Association's general meeting. He asked the members' permission to let Mr. Caluori present the offer, and he commented on or clarified the presentation as needed. Mr. Boucher testified that the Association's executive committee members proposed to reject the employer's offer. According to Mr. Boucher, Mr. Caluori was not of the same opinion. The unit members voted; 50 percent voted to accept the offer and 50 percent voted against it. Mr. Caluori described the situation as a "perfect storm" (translation), and they had to refer to the Association's constitution to declare whether the employer's offer was ratified or not. In accordance with the Association's constitution, the Association's President casts the deciding vote and thus had to decide. The employer's offer was therefore accepted. Mr. Price indicated that the final wording of the collective agreement was reviewed by Mr. Caluori and the members of the Association's executive committee. Mr. Price specified that there had been 29 bargaining sessions in total. After the collective agreement had been ratified, Mr. Price noticed that the Unifor logo was no longer posted on the Association's office door.

E. Background to the 2016 Agreement and Unifor's Presence after the Collective Agreement Was Signed

[45] On March 19, 2016, the Association held a vote by secret ballot on the merger between the Association and Unifor, in accordance with what was stated in the 2014 Agreement. Mr. Fragassi explained that during a discussion with Mr. Caluori concerning the merger, Mr. Caluori had told him that Unifor was there to stay, saying, "rest assured, we will be voted in." Mr. Boucher explained that 238 of 265 members had exercised their right to vote, and that 172 had voted in favour of merging, that is, 64.4 percent of the members. Under article 56 of the Association's constitution, two thirds of members had to be in favour of the merger for it to take place. Mr. Caluori specified that the rules of mergers in the Unifor Constitution are different from those of the Association and that the Association's constitution took precedence for the vote. Generally, he indicated that he had never applied the Unifor Constitution in the exercise of his role with the Association, but stated that he had applied the Association's constitution and by-laws several times.

[46] Mr. Boucher explained that, because of the high proportion of members who wanted to merge, the 2016 Agreement was then concluded with Unifor. The Association's communiqué

dated March 30, 2016, which did not have the Unifor logo or the words “Local 2410,” informed the members of the following:

> The time has come to bring light to the results of our vote to join Unifor. With 90% of our members that voted, meaning 238 members out of 265, it is not without deceit that we are officially announcing that the fusion with Unifor cannot take place at the moment. The official voting results are 172 YES versus 66 NO.
>
> With the results demonstrating clearly and unequivocally that we desire a merge with Unifor, 27 members did not exercise their right to vote, thus impeding us from attaining the dispositions in our constitution in article 56 that stipulates that a merge requires 2/3 of the members which is in fact 177.
>
> ...
>
> Rest assured the strong majority was ascertained, and we have no intention of letting you down. For this reason, we are working to better our service and professionalism to the members by prolonging the service contract until September 30, 2017. …

[47] The 2016 Agreement, for the period from April 26, 2016, to December 31, 2017, was similar to the 2014 Agreement, but this time provided that the Association’s current and future officers and stewards undertook to recommend to their members to “join the Union during the next open period” (translation), while the 2014 Agreement provided for a process and a merge vote. On April 9, 2016, a general meeting of the Association was held in order, among other things, to vote for the amendment to article 20 of the Association’s constitution, which concerns the quorum needed to hold general meetings. That article originally required the presence of 40 percent of the membership for a meeting to be held, but layoffs made this obligation difficult to meet. The percentage was reduced to 10 percent following the members’ vote.

[48] On May 5, 2016, the Association and Innotech signed a new collective agreement for the period of October 1, 2014, to September 30, 2020.

[49] On May 16 and September 22, 2016, and February 28, 2017, Mr. Jean-Stéphane Mayer, Unifor’s National Representative at the time with the Association, sent arbitration notices to the employer on Unifor letterhead. On one of them, the following words appeared in Mr. Mayer’s signature block: “National Representative, Unifor, for Innotech Aviation Employees’ Association (IAEA)” (translation).

[50] In May 2017, following an agreement concluded between the parties, which the Board took note of at the hearings, the unions undertook to stop using the name “Unifor Local 2410” until the Board renders its decision in this file. However, the 2016 Agreement continued to apply.

F. Labour Relations Between the Employer and the Association Since the 2014 Agreement

[51] Mr. Fragassi testified in general terms about the changes that had taken place since the signing of the 2014 Agreement and the arrival of Unifor. Outside the collective bargaining periods, the employer and the Association have a joint communications committee (the JCC), which holds monthly meetings to discuss problems related to the collective agreement and grievances and to resolve problems of mutual interest related to operations. The Association’s executive committee members and sometimes a union representative attend for the Association. Mr. Fragassi and Mr. Price, among others, attend for the employer. Mr. Fragassi considered that since the collective agreement had been signed, meetings have been more formal and more time is needed to resolve problems. Decisions are postponed because the Association’s executive committee members say that they must discuss them outside JCC meetings. Mr. Boucher indicated that the Unifor representative does not take part in the JCC and that the Association is much better organized since the last collective bargaining took place. He disagreed with Mr. Fragassi’s testimony regarding how long decisions take, but he said that it is important to make well-thought-out decisions with full knowledge. The Association resolves some issues independently, without the Unifor representative’s assistance. Mr. Price also testified that the number of grievances filed since the election of the Association’s executive committee in 2014 has increased considerably.

[52] Mr. Boucher indicated that Unifor’s role since the signing of the collective agreement has been mainly as follows: to provide legal advice with respect to the *Code* or complex files; to provide representation services at arbitration, review files, and coach members; and to provide advice about files submitted to the Commission des normes, de l’équité, de la santé et de la sécurité du travail. The Association would also like to be able to receive training provided by Unifor.

III. Positions of the Parties

[53] Although the Board carefully reviewed the documentation before it, these reasons for decision do not detail all of the arguments written or raised by the parties. What follows is a summary of their main arguments respecting the issues in dispute.

A. Innotech

[54] In addition to its counsel's submissions, the employer filed a book of case law and doctrine in support of its position as well as a detailed summary of its arguments.

[55] The employer essentially alleges that, in designating the Association in its communications with employees as "Unifor Local 2410" and in taking on the important attributes of the role of bargaining agent, Unifor is forcing the employer to bargain with it, thus obliging the Association members to become members of Unifor, while it is not duly certified. The employer argues that the goal of using those tactics is to contravene the public policy provisions of the *Code*, which could enable it to be duly certified under sections 24 and 43, and that this violates sections 95(a), 95(b) and 96 of the *Code*.

[56] Acknowledging that a union can conclude service agreements so that a third party can assist it in fulfilling certain obligations, the employer first claims that the Association rather completely gave up its role as its members' union representative to Unifor by means of the 2014 and 2016 Agreements. It notes at the outset that the objective of those agreements is precisely to ensure that Unifor becomes the bargaining agent for the Association's members. Relying on the clauses of the agreements between the unions, the employer concludes that, by obliging the Association to present itself as a Unifor local, by exclusively providing all union representation services, by subjecting the Association to its entire Constitution just like any other Unifor local, by forcing the Association (its current and future representatives) to recommend and to proceed to a vote to merge with it in the 2014 Agreement or to recommend joining it during the next "open" period in the 2016 Agreement, Unifor obtained a complete delegation of the Association's powers. For the employer, the series of changes that took place since the 2014 Agreement had been signed clearly show that delegation. It cites the following changes, among others: union dues increased significantly, the Unifor logo was present on several official communications, Unifor took control over the collective bargaining process and the Association's grievances were settled and signed by Mr. Caluori.

[57] The employer also argues that several provisions of the Unifor Constitution, which the Association undertook to comply with under the 2014 and 2016 Agreements, show that the Association became subject by contract to Unifor's control authority. It cites, among other things, Unifor's control authority with respect to the content of the Association's by-laws (article 7), guardianship authority over local unions (article 15) and the power of direction and control over the collective bargaining process and strike authorization (article 17). For the employer, the facts show that the Association is in exactly the same position as all other Unifor locals, while it is not a "Unifor union" (translation).

[58] The employer submits that the *Code* confers on a specific association, through the certification process, the exclusive right to bargain and to represent its members with an employer as a duly certified bargaining agent. This right is strictly governed by the *Code*. This position is supported by the case law as well as by sections 18.1, 24, 38, 43 and 36(1), specifically section 36(1)(a), of the *Code*. Although the Board acknowledges the validity of the service agreements that a union can sign, the employer argues that the Board acknowledges only the right of a certified union to appoint a representative to assist it in fulfilling certain obligations, not the right to delegate its powers completely. The transfer of representation rights from one association to another can be done only in accordance with the procedures set out in the *Code*. The employer specifies that certification is public in nature and that the parties cannot modify it by agreement. In addition, citing the Supreme Court of Canada in *Bisaillon v. Concordia University*, 2006 SCC 19; [2006] 1 S.C.R. 666, the employer specifies that certification provisions not only protect the rights of employees, but they also ensure stability for the employer in terms of the identity of the bargaining agent that it must deal with.

[59] Citing the decision of the Quebec Court of Appeal in *Martin* c. *Syndicat des travailleuses et travailleurs de l'industrie et du commerce, numéro 705*, 2007 QCCA 899, which is based on the principle of exclusivity of the right to union representation, the employer insists on the fact that a union cannot abandon the main attributes of its role as bargaining agent by means of a service agreement.

[60] The employer provided a detailed response to the Board's request to provide submissions on *Airtex Industries Ltd*. and *Yukon Energy Corporation*, *supra*, concerning service agreements between unions. It explains that the service agreement in *Yukon Energy Corporation*, *supra*, expressly set out that the certified association kept the control over limited activities of the third-

party association, which acted solely as a service provider, while the service agreement in *Airtex Industries Ltd.*, *supra*, was rather concluded with the goal of a temporary merger until a real merger could take place. The employer argues that the facts show that the purpose of the service agreement in this case is to reproduce a merge situation, just like in *Airtex Industries Ltd.*, *supra*, pending the filing of an application for certification during the next open period.

[61] The employer reiterates that the merger was rejected by the Association members in this case. It claims that, to bypass this unfavourable result and promote Unifor's certification, the unions concluded a second service agreement, the 2016 Agreement, and amended the quorum rules. The employer notes that the Association's executive committee bound itself and whoever was going to succeed it.

[62] In addition, the employer submits that not only did Unifor *de facto* assume bargaining agent powers through the 2014 and 2016 Agreements, but it also implies, through misrepresentation, that it is the certified bargaining agent for the employees. As such, Unifor would identify itself in its communications and through various methods as "Innotech Aviation Limited Employees' Association, Unifor Local 2410," even though it is not certified. Given the objective of the 2014 and 2016 Agreements, the employer considers that Unifor is seeking to create some confusion among members through its misrepresentation in order to promote its future certification; Unifor thus maintained ambiguity regarding the true identity of the members' bargaining agent over several months in order to ensure that it would be certified in the end. In the meantime, Unifor was forcing the Association members to be represented by it, and the employer bargained with it.

[63] Regarding the fact that a collective agreement was ultimately signed, the employer submits that it was merely being cooperative and that the Board should not penalize it for that.

[64] Finally, in response to the respondents' preliminary argument regarding the timeliness of the complaint, the employer submits that its complaint was not submitted outside the time limit. Sections 95(a), 95(b) and 96 of the *Code* must be continuously complied with since the alleged violations are related to obligations whose purpose is to protect the collective bargaining process and which involve public interest.

[65] Since the file has evolved, the employer now asks the Board for three remedies to sanction the unions' conduct. It asks it to prohibit the Association from presenting itself as a Unifor local;

to also terminate any service agreement between the Association and Unifor; and finally, to prohibit the Association and Unifor from concluding any new service agreement or to prohibit Unifor from directly or indirectly providing services to the Association or its members until the current collective agreement expires, namely, September 30, 2020, or until Unifor is duly certified pursuant to the provisions of section 24(2)(d) of the *Code*.

B. The Association and Unifor

[66] The unions submit that this complaint was filed outside of the time limits set out in the *Code*, that is, more than 90 days after the date on which the employer knew or ought to have known of the action or circumstances giving rise to the complaint. They are of the view that the facts alleged by the employer were known to its representatives in December 2014, following discussions between Mr. Price and Mr. Caluori, or on June 10, 2015, at the latest, that is, the date of the cease and desist letter sent by Innotech.

[67] The unions allege that they were as transparent as possible with the Association members and with the employer regarding the 2014 and 2016 Agreements. The Association submitted said agreements for approval and ratification by members at general meetings and kept the members informed of any developments and the content of the collective bargaining. The unions submit that members were perfectly well informed about the fact that the Association was bound by a service contract with Unifor but that it kept all of its autonomy. They also submit that the employer had been informed of the agreement as of November 2014 and that it cannot credibly claim that it was misled, manipulated or misinformed about the nature of the relationship between the unions.

[68] The unions submit that they did not violate the provisions of sections 95(a), 95(b) or 96 of the *Code*. They claim that the Association is duly certified by the Board as the bargaining agent of the employees concerned. As a service provider, Unifor acted lawfully in appointing a representative to advise and assist the Association, among other things, for negotiating the renewal of the collective agreement, for interpreting and applying the collective agreement, for various administrative and judicial proceedings and for managing the Association's internal affairs. Unifor was simply an agent duly authorized by the Association and its members. As such, the Association did not renounce its prerogatives and its monopoly as certified bargaining agent. It remains sovereign and autonomous unlike duly certified Unifor locals. The Association was only bound to Unifor by the 2016 Agreement, an agreement that it could terminate on the

termination date provided—December 31, 2017—or sooner, subject to the applicable general law provisions, which could have enabled one of the unions to terminate the agreement for a valid reason. The same possibility existed for the 2014 Agreement.

[69] The unions argue that the use of Unifor's logo and the name "Unifor Local 2410" by the Association and its members stems from freedom of association and freedom of expression, which are cornerstones of Canadian labour law, and this issue does not concern the employer, which would be unlawfully interfering with the exercise of those fundamental freedoms.

[70] The unions reiterate that, in May 2015, the employer objected to continuing negotiations in the presence of Mr. Caluori, unless the Association provided it with the details of the 2014 Agreement and stopped using the Unifor logo and the name "Unifor Local 2410," and that it repeated its objection in December 2015. Without filing formal complaints, they submit that the employer voluntarily and unduly attempted to undermine their credibility with the Association members, contrary to section 94(1)(a) of the *Code*. In doing so, the employer also failed to fulfill its duty to bargain in good faith set out in section 50(a)(i) of the *Code*.

[71] With respect to *Airtex Industries Ltd.* and *Yukon Energy Corporation*, *supra*, the unions argue that the service agreement at issue in *Yukon Energy Corporation*, *supra*, is essentially similar to the one concluded between them; that is, an agreement for advice and technical assistance services in relation to negotiating a renewal of the collective agreement, interpreting and applying the collective agreement and managing internal affairs, as well as for representation services in administrative and judicial proceedings and training services. The difference between the two services was that the union representative did not take part in joint meetings with the employer in this case. The unions state that the certified union delegated all of its powers and prerogatives in bulk in *Airtex Industries Ltd.*, *supra*, pending a merger approved by its members. Thus, all of the powers related to the status of bargaining agent and all of the certified union's governance powers such as hiring, finance management and collection of revenues were transferred, which is not the case here.

[72] In response to the employer's allegations that Unifor is seeking to bypass the failure of the merge procedure set out in the 2014 Agreement, the unions argue that this type of service agreement with the goal of a future merger or certification is not illegal.

[73] Finally, the unions submit that the Association merely concluded a contract with Unifor, an experienced union with considerable resources, under which Unifor provided it with support and technical assistance, and that this type of agreement is common in the union sphere where non-affiliated associations seek an alliance with strong and effective unions in the interest of their members. The unions are asking the Board to dismiss the complaint.

IV. Analysis and Decision

A. Timeliness

[74] Under section 97(2) of the *Code*, any complaint filed pursuant to section 97(1), including complaints alleging violations of sections 95 or 96, must be filed within 90 days:

> **97 (2)** Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[75] Relying on this section, the unions submit that Innotech's complaint is untimely since it was filed outside of the time limits prescribed by the *Code*. Specifically, the respondents argue that all of the facts alleged by Innotech have been known to their representatives since December 2014, or June 2015 at the latest. The respondents refer the Board to "COMMUNIQUÉ No. 1" (translation), dated December 19, 2014, informing the members of the latest developments following the signing of the 2014 Agreement; to the e-mail exchange between Mr. Price and Mr. Boucher on April 24 and May 11, 2015; to the e-mails exchanged between Mr. Price and Mr. Caluori on May 11 and 13, 2015; and to Innotech's cease and desist letter dated June 10, 2015.

[76] Even though the rule in section 97(2) of the *Code* is applied by the Board in cases of complaints where the complainant's concerns are related to a specific moment or event, such as the refusal to file a grievance, the Board has developed a specific policy for situations where the complaint is instead related to a failure to meet an ongoing obligation involving general public interest.

[77] In *D.H.L. International Express Limited*, 2001 CIRB 129, the Board dealt with the timeliness issue in the context of allegations of a violation of sections 50(b) and 94(1)(a) of the *Code*. The Board concluded that the breach of a duty concerning general public interest, such as the duty to

bargain in good faith and not to interfere with the formation of a trade union, was a continuing violation:

> [77] Even if the Board agreed with the company's argument that the nature of the present complaint is "grounded in time" in the same manner as a dismissal, the legal obligations imposed on DHL under paragraphs 50(b) and 94(1)(a) are not limited to discrete events occurring within the 90-day period prior to the filing of the complaint. **In our view, these obligations are ongoing in order to preserve the integrity of the collective bargaining process. As the duty imposed by paragraphs 50(b) and 94(1)(a) is of general public interest, the failure to comply gives rise to a continuing offence.** As the Board noted in *CFTO-TV Limited* (1995), 97 di 35; and 95 CLLC 220-045 (CLRB no. 1111):
>
> > ... The Board's policy with respect to timeliness was established originally in *Upper Lakes Shipping Ltd.* v. *Mike Sheehan et al.*, [1979] 1 S.C.R. 902. According to this policy, it is clear that a complaint filed pursuant to section 97(1) of the *Code* must be filed within the 90-day period prescribed by section 97(2). **The approach taken by the Board has depended on whether the timeliness question was raised in the context of the same violation repeated several times or of continuing offenses. Where the purpose of a duty imposed by the *Code* is of a general public interest, the Board has held that a failure to comply gives rise to a continuing offence.** For example, in *Air Alliance Inc.* (1991), 86 di 13; and 92 CLLC 16,013 (CLRB no. 887), the Board had this to say:
> >
> > "This being the case, the intent of section 97(2), as regards the timeliness of a complaint, is not to ensure that a party that systematically contravenes the *Code* can do so with impunity, but rather to prevent repeated proceedings. In this type of case, the time limit does not begin to run until the unlawful conduct has ceased. ...
> >
> > (pages 22; and; and 14,093)"
>
> (emphasis added)

[78] It is alleged in this matter that the unions violated sections 95(a), 95(b) and 96 of the *Code*. In the Board's view, the prohibitions and obligations set out in those provisions concern general public interest because they protect, on the one hand, the integrity of the collective bargaining process and, on the other hand, employees' fundamental right to freely choose their bargaining agent. In these circumstances, given the fact that the alleged violations are related to the 2014 and 2016 Agreements, the last service agreement still being in effect at the time of the hearing, the Board accepts the employer's arguments and will apply to this matter its policy as described in *D.H.L. International Express Limited*, *supra*. The Board thus considers that the breach alleged in this case would be considered a continuing offence. Consequently, the Board dismisses the preliminary argument raised by the respondents and will deal with the complaint on the merits.

B. Merits of the Complaint

[79] In these proceedings, the employer alleges that the unions acted in violation of sections 95(a), 95(b) and 96 of the *Code* by, among other things, concluding the 2014 and 2016 Agreements by means of which, according to Innotech, Unifor in fact became the bargaining agent that it had to deal with while it was not the certified union.

[80] Sections 95(a), 95(b) and 96 of the *Code* read as follows:

> **95** No trade union or person acting on behalf of a trade union shall
>
> > **(a)** seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;
> >
> > **(b)** bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;
> >
> > …
>
> **96** No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union.

[81] Essentially, the Board must determine whether Unifor sought to force Innotech, directly or even indirectly, to bargain with it. To do so, it is useful to first reiterate some fundamental principles that are at the core of the complaint, namely, principles related to the exclusivity of the bargaining agent's role and to service agreements. Second, the Board will examine the part of the complaint related to sections 95(a) and 95(b) and will analyze whether, by means of the 2014 and 2016 Agreements, the Association completely delegated its exclusive power of representation to Unifor, or whether Unifor substituted its authority for that of the Association through various maneuvers to represent the Association members. Third, the Board will examine the part of the complaint related to section 96 of the *Code*.

1. The Exclusivity of the Bargaining Agent's Role and Service Agreements

[82] The power of a union to conclude a service agreement so that a third party may assist it in fulfilling some of its obligations is not called into question in this matter. The Board's review in this matter instead stems from the fact that the *Code* confers rights and privileges and imposes

obligations on bargaining agents, including the exclusive duty of representation. Yet, it is alleged that those rights and obligations were not complied with in this case.

[83] Through the certification procedure provided in section 24 of the *Code*, the Board grants a union the **exclusive** right to bargain and to represent members covered by a bargaining certificate. The union thus becomes the only spokesperson for employees included in its bargaining unit. Section 36(1) of the *Code* provides the following:

> **36 (1)** Where a trade union is certified as the bargaining agent for a bargaining unit,
>
> **(a)** the trade union so certified has exclusive authority to bargain collectively on behalf of the employees in the bargaining unit;
>
> **(b)** the certification of any trade union that was previously certified as the bargaining agent for any employees in the bargaining unit is deemed to be revoked to the extent that the certification relates to those employees;
>
> **(c)** the trade union so certified is substituted as a party to any collective agreement that affects any employees in the bargaining unit, to the extent that the collective agreement relates to those employees, in the place of the bargaining agent named in the collective agreement or any successor thereto; and
>
> **(d)** the trade union so certified is deemed to be the bargaining agent for the purposes of paragraph 50(b).

[84] However, the *Code* does not specify that the union must represent the members in its bargaining unit using its own officers. It has long been established in the Board's jurisprudence that a union has the right to manage its affairs and to choose its representatives for that purpose (see *Canada Post Corporation* (1989), 79 di 122; and 7 CLRBR (2d) 245 (CLRB no. 772)). In addition, it is well established that the union has the freedom to choose its representatives at the bargaining table and that it can even choose people who are neither in the bargaining unit nor employees of the employer stated in the certification order (see *Lethbridge Television, a Division of Westcom TV Group Ltd. et al* (1997), 105 di 68; 39 CLRBR (2d) 180; and 98 CLLC 220-021 (CLRB no. 1214)). Thus, unions sometimes use the services of legal counsel to negotiate collective agreements and to represent the union in grievance proceedings. Unions may also hire or appoint agents to carry out certain tasks on a regular basis or in special cases through a service agreement or by other means. Such agreements in themselves do not contravene the *Code* on the condition that the agent acts on behalf of the certified bargaining agent rather than on its own behalf.

[85] In addition, *Yukon Energy Corporation* and *Airtex Industries Ltd.*, *supra*, demonstrate that service agreements, which are common in the union sphere, will not be questioned as long as the exclusive legal rights and privileges of the certified bargaining agent are preserved.

[86] In *Airtex Industries Ltd.*, *supra*, the Alberta Labour Relations Board (ALRB) found that the employer had engaged in an unfair labour practice in refusing to deal with a representative of a union that was not certified with the employer but which was a party to a service and merge agreement with the duly certified bargaining agent, the Engineered Air Employees Association (EAEA).

[87] In that matter, the EAEA had concluded a merge agreement with the United Food and Commercial Workers Union, Local 421P (Local 421P). As the merger required an amendment to the certified union's constitution, which had not been enshrined, a service agreement was concluded between the parties, pending the adoption of the amendment and the completion of the merger. It is useful to reiterate the terms of the service agreement between the EAEA and Local 421P:

> (1) Local 421P shall provide and pay business agents who will act on E.A.E.A.'s behalf in conducting organizing campaigns and servicing E.A.E.A. collective bargaining agreements.
>
> Local 421P's president, or the president's designee, shall convene negotiating committees from among E.A.E.A. membership and shall conduct collective bargaining on its behalf. Proposed contracts shall be signed by the negotiating committee or a majority thereof,
>
> At membership meetings held for the purpose of contract ratification, contracts or copies of negotiated changes to them will be made available for distribution.
>
> E.A.E.A. hereby delegates to Local 421P and its agents all E.A.E.A. authority and responsibility for hiring, directing and replacing a staff, organizing new members and negotiating and administering collective bargaining contracts.
>
> (2) All income of E.A.E.A. including dues, fees, fines and assessments, will be paid to Local 421P which shall pay all bills and expenses of E.A.E.A., maintain all its financial records, account for expenditures and prepare and file any reports required of E.A.E.A. All bills and expenditures of E.A.E.A. shall be approved by its Executive Board, except that payment of regular normal operating expenditures, including but not limited to rent, utilities, taxes, salaries, expenses, telephone, office supplies, equipment and other organizations to which E.A.E.A. is affiliated, shall be made when due by Local 421P.
>
> All monies left after expenditures on E.A.E.A.'s behalf shall be retained by 421P as payment for its services to E.A.E.A.'s membership.
>
> (3) Local 421P shall have custody of all E.A.E.A.'s books and records. …

> (4) Monies received by 421P from E.A.E.A. allocable to per capita tax shall under no circumstances be used for the expenses of Local 421P or E.A.E.A., but shall promptly be transmitted to the United Food & Commercial Workers International Union, and subordinate bodies.
>
> (5) No oral agreements not reduced to writing and signed by the parties hereto shall be admissible to vary the terms of this agreement. This agreement may be modified only by a document signed by the executive officers of Local 421P and E.A.E.A. and ratified by their respective memberships.
>
> (6) This agreement shall be effective February 1, 1990 and in place till merged with Local 421P U.F.C.W. is completed.
>
> [*sic*]

[88] In judicial review of the ALRB's decision, the Alberta Court of Queen's Bench found that the ALRB had erred in law in concluding that the service agreement had been valid. According to the Court, the employer therefore had just cause to refuse to deal or bargain with the representatives of Local 421P. Although some provisions applicable in that case differ from the provisions provided in the *Code*, the Court explained the following about the service agreement the dispute was based on, which, according to it, provided for a complete delegation of all of the powers of the certified agent in place:

> The service agreement purports to assign to the UFCW every conceivable right and responsibility the Association has as the certified bargaining agent and as a party to the collective agreement. The Association continued to exist and held meetings. It appears, however, that these meetings were primarily for the purpose of proceeding with the contemplated merger with the UFCW. In light of the agreement, the Association was no more than a surrogate of the UFCW in respect of its rights and responsibilities under the *Code* and under the collective bargaining agreement.
>
> ...
>
> I am satisfied that the Board erred in law in according any validity to the service agreement. The service agreement is not simply a means by which the Association employed outside consultants to assist it, as the Board stated. It is a transfer of virtually all of the rights and duties conferred upon it by certification under the *Code* and by virtue of its status as a party to the collective bargaining agreement. That, in my view, is the only rational interpretation of the service agreement, whether it is read in isolation or in the context of the surrounding circumstances. In my view, the Board's interpretation of the service agreement was not a logical or reasonable one in the circumstances. The Board's conclusion that the service agreement is valid and operative was a patently unreasonable error of law.

[89] In *Yukon Energy Corporation*, *supra*, the Board also had to decide on the validity of a service agreement, different from the one that was at issue in *Airtex Industries Ltd.*, *supra*. In

that matter, the Board also had to determine, among other things, whether a fixed term service agreement between the Yukon Utility Worker's Association (YUWA) and the Public Service Alliance of Canada (PSAC) was an illegal delegation of YUWA's authority as the exclusive bargaining agent, in violation of the fundamental principles and objectives of the *Code*. Under said agreement, the PSAC undertook, among other things, to represent the members during grievance and arbitration proceedings, to provide advice on the interpretation of the collective agreement as well as training, assistance and representation services during official meetings with the employer and to provide advice to the union's executive on internal administrative issues. YUWA's union dues had to be paid to the PSAC, subject to a remittal of balance to the certified union. However, YUWA kept its investments. The agreement also provided that this was not a merger within the meaning of section 43 of the *Code* and that the PSAC would have no ongoing obligations to the members of YUWA after the agreement expired, unless it was renewed or YUWA's members decided to join the PSAC. YUWA informed the employer that it had concluded a service agreement with the PSAC and confirmed that the PSAC had authority to take part in all meetings regarding grievance proceedings and employer-union joint committees. After analyzing the provisions of the service agreement at issue, the Board considered that YUWA had not unlawfully delegated its exclusive authority as bargaining agent and, accordingly, that it had not violated any provisions of the *Code*. Distinguishing *Airtex Industries Ltd.*, *supra*, from the matter that was at hand, the Board wrote the following:

> The decision in *Airtex Industries Ltd.*, *supra*, relied upon by the employer is, in the Board's opinion, quite distinct from the present matter. In *Airtex Industries Ltd.*, *supra*, while the membership had authorized the service agreement by a majority vote, the agreement itself was found to be a "wholesale delegation by the Association of its rights and responsibilities as the certified bargaining agent" (page 520). In that case, the United Food and Commercial Workers Union, Local 421P ("UFCW") was being substituted intentionally as bargaining agent for the Association, as evidenced by the ongoing attempts to complete their merger. The Board had emphasized that the service agreement "was merely an interim agreement until merger with the UFCW could be implemented and the latter substituted as certified bargaining agent by declaration of the Board" (page 521).
>
> ...
>
> **The service agreement states that, while PSAC will provide various representational services to YUWA members, the YUWA executive maintains the authority to exercise direction on the limited services provided by PSAC.**
>
> **It is well recognized that a union has the right to manage its internal affairs and to make administrative decisions without fear of interference.** In the present matter, having reviewed the Service Agreement, the Board is of the opinion that the Agreement is part of the

> YUWA's internal administrative affairs. The person(s) the union chooses to represent it is no business of the employer. (See *Canada Post Corporation* (1989), 79 di 122; and 7 CLRBR (2d) 245 (CLRB no. 772)).
>
> (pages 6 and 8–9; emphasis added)

[90] Thus, a bargaining agent may conclude a service agreement with another union on the condition that the agent or representative acts on behalf of the certified union, not on its own behalf. The issue of whether a certified bargaining agent has completely given up its exclusive representation authority is a question of fact, which must be determined based on the circumstances of each matter.

[91] It is therefore in light of those fundamental principles that the Board will examine the nature of Unifor's commitment to the Association through the 2014 and 2016 Agreements, and whether the unions indeed violated sections 95(a), 95(b) and 96 of the *Code*.

2. The Complaint Under Sections 95(a) and 95(b) of the *Code* and the Service Agreements at Issue

[92] There is very little jurisprudence regarding sections 95(a) and 95(b) of the *Code* to date. In *Szabo and Jarkovsky* (1977), 25 di 345; and [1978] 1 Can LRBR 161 (CLRB no. 103), the Canada Labour Relations Board (CLRB), the predecessor of this Board, considered the purpose of those provisions as part of an application for revocation of a bargaining agent's bargaining rights acquired through voluntary recognition:

> The preferred avenue for acquisition of bargaining rights is certification. The existence of the voluntary recognition route recognizes historical relationships antedating the *Code*, sanctions voluntary expansions of certified units, and continues to countenance the commencement of a relationship by agreement of the employer. **But a union may not compel the employer to recognize it (sections 185(a) [now sections 95(a)] and [185](b) [now 95(b)] and 184(3)(g) [now 94(3)(g)])**. Nor can it strike for recognition (*Radiodiffusion Mutuelle Limitée*, 18 di 56).
>
> **The certification procedure is hinged on a determination of the wishes of the employees before certification is granted.** Once certification is issued the policy of the *Code* is to allow the union to direct its attention to bargaining without being diverted by employees changing unions or seeking decertification. …
>
> (pages 350–351; and 165; emphasis added)

[93] The Board and its predecessor have rarely had to decide a violation of section 95(a) of the *Code*. In *H.M. Trimble & Sons Limited* (1976), 14 di 87 (CLRB no. 52), the CLRB concluded that

the local of a union had used coercive methods by applying economic pressures on the employer which had filed the complaint, namely, an interprovincial bulk merchandise transportation company, so that it would direct its employees to change union allegiances and to force it to hire members of the respondent union. The CLRB described situations where the economic pressure applied by the respondent, which was not the certified bargaining agent in place at the time, fell under section 95(a); the examples cited by the CLRB were, among other things, preventing the complainant's employees from accessing the sites where the merchandise transported by the complainant was delivered and preventing the products from being unloaded. The CLRB explained that "[s]ection 185(a) [now section 95(a)] does not require that the union succeed in compelling the employer to bargain collectively with it; it only stipulates that the trade union shall seek to compel the employer to bargain collectively with it."

[94] Thus, by prohibiting unions that are not exclusive bargaining agents from seeking to compel an employer to bargain with them, section 95(a) protects the integrity of the collective bargaining process.

[95] Section 95(b) of the *Code*, in turn, protects bargaining units as described by the Board in a certification order by prohibiting a union from concluding or trying to conclude a collective agreement that would infringe on a certification order belonging to another union. A parallel provision, section 94(3)(g), is aimed at preventing employers from doing the same thing. As such, these sections also contribute to ensuring the integrity of the collective bargaining process and thus reduce the risk of jurisdiction conflicts between unions. The Board notes that it has never been asked to decide a complaint under section 95(b) of the *Code* in a situation such as the one before it in the present file. Indeed, past decisions of the Board and its predecessor concerning these provisions deal mainly with jurisdiction conflicts between duly certified unions (see *Eastern Provincial Airways (1963) Limited* (1978), 30 di 82; and [1978] 2 Can LRBR 572 (partial report) (CLRB no. 142); *Bell Canada* (1982), 50 di 105 (CLRB no. 393); and *Société Radio-Canada*, 2000 CIRB 68).

[96] After carefully considering the documentary and testimonial evidence presented, as well as the parties' arguments, the Board cannot conclude that the unions violated sections 95(a) and 95(b) of the *Code*.

[97] It should be reiterated that when this complaint was filed, Innotech initially alleged, among other things, a violation of section 95(a) of the *Code*, which prevents a union from seeking to

compel an employer to bargain collectively with it while it is not the certified bargaining agent. However, despite the evolution of the file, specifically, the conclusion of a collective agreement in May 2016, the employer maintained that there had indeed been violations of sections 95(a) and 95(b) of the *Code*.

[98] In the Board's view, the testimony heard confirms that Unifor in no way sought to compel or force Innotech to bargain with it so as to claim the Association's rights. The evidence also confirmed that there could be no confusion for the employer or the employees regarding Unifor's role, which was to assist the Association in its obligations, not to replace it.

[99] It is worth reiterating some facts stemming from the evidence heard. Innotech had been informed in November 2014 of the Association's intention to obtain Unifor's help through a service agreement. Far from acting surreptitiously, the Association, after having its members vote on the initiative, also kept them informed of developments with various communiqués posted in the workplace, in full view of the employer's representatives. Mr. Caluori even visited the facilities with the employer's representatives. Although Innotech was not informed of the exact terms of the 2014 Agreement since it had not received a copy, the employer was nonetheless clearly informed in November and December 2014 of its term and content—namely, the assistance that Unifor would provide during negotiations, which would begin once the grievances on leave for union business were settled, as well as the assistance that Unifor would provide as part of third-level grievances and grievance resolution proceedings. The evidence shows that the employer was not at all opposed to continuing discussions with the Association's executive committee in Mr. Caluori's presence. In addition, the Board notes that the employer negotiated an agreement regarding said grievances with Mr. Caluori, who acted as a representative of the Association's executive committee members, who were also present. Collective bargaining ultimately began on December 18, 2014.

[100] Thus, negotiations with the employer were undertaken on December 18, 2014, and continued for 13 days without objection in the presence of the Association's executive committee, which was accompanied by the Unifor representative, who acted as a spokesperson. The Board notes that on the cover page of the list of union demands given on December 18, 2014, the bargaining committee members listed are the members of the Association's executive committee, and Mr. Caluori is listed last as the "National Representative of Unifor Quebec" (translation). Notwithstanding the clarifications provided in November and December 2014

regarding Unifor's role, Mr. Caluori again explained that role in an e-mail sent on May 13, 2015, following Innotech's request for clarification dated May 11, 2015, stating that it was to provide help with negotiations and grievance "administration" and to provide any other services that Unifor could offer. The Board notes that the employer then agreed to continue the negotiations, asking the Association, however, to stop issuing any communications implying that it was "Unifor Local 2410."

[101] The Board wishes to point out that, in total, 29 meetings had taken place with the employer before a collective agreement was concluded in May 2016, which was signed by the members of the Association's executive committee. The Board considers that Innotech's allegations that the employer was forced to bargain with Unifor are therefore hard to reconcile with the evidence presented. In the Board's opinion, the evidence shows that not only did Unifor act as a representative of the Association, which remained the employer's contact at all times, but Innotech had also understood the limited role played by Mr. Caluori very well.

[102] In fact, after hearing the testimony of Mr. Price and Mr. Fragassi, the Board cannot conclude that there was any confusion or doubt whatsoever about Unifor's role. The Board also notes the e-mails exchanged between the parties on that subject. Mr. Caluori explained that he had been very clear with the employer in 2014, even regarding Unifor's future intentions, namely, to become the certified bargaining agent in a future merger. Mr. Price did not satisfy the Board that the situation resulted in real confusion. He explained that the situation created a "hindrance" for the employer. However, this is not sufficient to warrant the Board's intervention.

[103] Although Innotech objected to continuing negotiations on May 11, 2015, until the Association clarified the nature of its relationship with Unifor, the employer agreed to continue discussions after Mr. Caluori had again explained the nature of the service agreement. Regarding the cease and desist letter dated June 10, 2015, it did not oppose Mr. Caluori's presence at the bargaining table, but rather set out the employer's concerns about Unifor's name still appearing in the Association's communications with Innotech and its employees. The employer also had concerns regarding Unifor's intentions. However, the evidence shows that, once Mr. Fragassi and Mr. Price obtained clarification about the nature of the service agreement, they made do with the situation with the firm intention of concluding a collective agreement with the Association, which is what happened.

[104] The Board will now examine whether Unifor indirectly compelled the employer to bargain with it through other schemes. Innotech tried to show that the Association had indeed become a Unifor local without following the process set out in the *Code*, emphasizing, among other things, the Association's obligation to identify itself as a Unifor local and comply with Unifor's Constitution and by-laws as well as the absence of any difference between the situation of the Association and a duly certified local union. However, the Board cannot accept such a proposition.

[105] The evidence has shown that, although some of the terms of the fixed term service agreement may certainly have seemed, at first glance, to have far-reaching implications—such as the name that had to be used; article 1 of the 2014 Agreement, which provided for compliance with Unifor's Constitution and by-laws; or article 9, according to which Unifor undertook to provide the Association with "all services normally provided to its members" (translation)—the facts reflect a different reality and confirm that the Association did not delegate all of its authority to Unifor.

[106] In fact, like in *Yukon Energy Corporation*, *supra*, the Association remained autonomous and retained its control in any decision-making process at all times. The evidence showed that, even on critical issues, like the Association's demands when it was preparing its list of demands or when the employer's offer was presented in 2016, the Association did not follow all of Unifor's advice. In that regard, it is worth recalling the testimony of Mr. Boucher, according to which Mr. Caluori was shocked about some of the Association's demands. The Association continued to fulfill its obligations, for example, in participating in negotiations, in taking part in any discussions with the employer and in keeping its members informed of the issues. In addition, the Association continued to take part in JCC meetings and maintained all of its authority to make decisions autonomously.

[107] Regarding the Association's compliance with Unifor's Constitution and by-laws, the Board accepts Mr. Caluori's testimony that only some articles could be applied. In addition, the evidence heard confirmed that the Association continued to operate based on its own constitution, for example, during the merge vote and the vote on the employer's offer in order to conclude the 2016 collective agreement.

[108] The Board is satisfied that the name "Unifor Local 2410" in the 2014 and 2016 Agreements was initially required, in reality, only for administrative purposes. While the Board did find it

peculiar that the Unifor logo and the name “Unifor Local 2410” were seen on the Association’s communications, and while this could initially have led to some confusion, Mr. Boucher provided frank and honest testimony that this was nothing but an initiative taken in good faith by the Association’s executive committee for promotion with its members—in order to justify the union dues required for the services retained, which were certainly much higher than those of the Association—and to show the employer the resources that the Association now had to lead negotiations. Mr. Boucher acknowledged having to explain to some members the reason for adding the Unifor logo.

[109] The Board heard no evidence concerning the misrepresentations, which, according to the employer, were made to the Association members. Only Mr. Boucher testified about the fact that there was no doubt in the Association members’ minds regarding the identity of their certified bargaining agent, and he explained that the service agreements were approved following a democratic vote. Mr. Boucher stated that the members were well informed that they were only bound to Unifor by a service agreement. The Board notes that the communiqués sent to members during the entire period at issue were also very clear regarding the Association’s intentions and Unifor’s role. However, if, as a result of the service agreements, Unifor became more visible with a view to potentially merge or participate in a “friendly” raid during the next open period, the Board finds that any exercise of democratic choice by the members would have been done with full knowledge.

[110] Furthermore, the fact that the service agreements required the recommendation to merge or to join by raiding has had no effect on the Association’s rights and obligations as a certified bargaining agent or on the freedom of choice of those in the bargaining unit. In fact, the evidence shows that members clearly voted freely since some of them disagreed with the merger proposed in 2016. Thus, it is difficult for the Board to accept that the Association members could have been misled or believed that Unifor represented them.

[111] Although the Board acknowledges the similarities alleged by Innotech between a duly certified local union and the situation of the Association when it was bound by a service agreement, the Board accepts that the Association did not benefit from all of the rights and privileges of a Unifor local. Even though the service agreement provided, among other things, that Unifor undertook to provide the Association with “all of the services normally provided to its members” (translation), the Board cannot, taking into account the evidence heard regarding the

nature of Unifor's commitment, agree that the Association gave up all of its representation authority as an exclusive bargaining agent or tried to reproduce a merge situation. There is no evidence before the Board showing that the Association freed itself from its obligations, as alleged by Innotech. The evidence rather showed that the Association's executive committee at all times remained present, engaged and responsible for any decisions related to its obligations. Its role remained basically the same but with better resources and additional services.

[112] Thus, in light of the foregoing, the Board has no evidence before it of maneuvers, tactics or other actions by Unifor that would have resulted in Innotech being forced to bargain with Unifor on its own behalf or that other "schemes" were implemented in order to ultimately compel Innotech to bargain with Unifor in its capacity as a bargaining agent.

[113] The Board agrees with the statements of its predecessor in *H.M. Trimble & Sons Limited*, *supra*, that for a violation of section 95(a) of the *Code* to occur, it is not necessary that the union succeed in compelling the employer to bargain collectively with it; it is sufficient that it seeks to do so. However, as mentioned above, the evidence before the Board does not justify such a conclusion.

[114] The Board therefore cannot conclude that Unifor sought to compel Innotech to bargain with it or that it substituted its authority for that of the Association in order to compel the employer to bargain with it in any way, under section 95(a), and it did not violate section 95(b) because Unifor did not act on its own behalf when it represented the Association in collective bargaining. Thus, the collective bargaining remained at all times between Innotech and the duly certified bargaining agent. In the same vein, the Board cannot conclude that Unifor tried to avoid following the process set out in the *Code* to become the bargaining agent for Innotech employees.

[115] As explained by the Board, it will not intervene in service agreements or regarding their details unless their terms result in a *Code* violation, which, given the evidence presented, is not the case in the present matter.

[116] Thus, the Board has no reason to intervene in the union's internal affairs and to insert itself in the contractual commitment between the Association and Unifor since the 2014 and 2016 Agreements do not in fact bypass the fundamental principles protected by the *Code*.

[117] Therefore, the Board dismisses the employer's complaint alleging violation of sections 95(a) and 95(b) of the *Code*.

3. The Complaint Under Section 96 of the *Code*

[118] The employer also alleges that the unions violated section 96 of the *Code*, which prohibits any person from seeking by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union.

[119] That provision, which has a broader scope than sections 95(a) and 95(b), is also aimed at protecting the fundamental right of employees to freely choose their bargaining agent without any influence.

[120] In *Desgagnés Marine St-Laurent Inc.*, 2016 CIRB 825, the Board shed light on the meaning to be attributed to that prohibition, namely, the type of conduct prohibited and the analysis to be conducted in a complaint under section 96:

> [79] The following definitions are given in DION:
>
> > ***coercion*****:** constraint, intimidation.
> >
> > ***constraint*****:** violence, physical or mental hindrance exerted against a person to compel that person to act or to refrain from acting.
> >
> > ***intimidation*****:** threat or undue pressure directed at a person or group with the aim of compelling action that would not otherwise be taken.
> >
> > (translation)
>
> [80] In *FedEx Ground Package System*, Ltd., 2011 CIRB 614, the Board explained its understanding of the definition:
>
> > [234] … the definition of intimidation, coercion and undue influence in a labour relations context contains a basic element, namely, any effort to invoke some form of force, threat, undue pressure or compulsion, for the purpose of controlling or influencing an employee's freedom of association.
>
> [81] In *Desgagnés Marine Petro Inc. and Desgagnés Marine Cargo Inc.*, *supra*, the Board shed light on the analysis to be carried out in connection with a complaint under section 96 of the *Code*:
>
> > [72] The Board must analyze whether the impugned representation activities or communications carried out by the respondent's representatives constitute threats or coercion amounting to constraint or intimidation. …

[82] It also emphasized the effect that such representation activities or communications must have:

> [85] Lastly, the Board emphasizes that the complainant did not demonstrate that the respondent's impugned representation activities or communications might have had a disruptive effect on its members that led them to cease to be members of their union. …

[121] For the Board, a violation of section 96 thus requires evidence of coercion, constraint or intimidation and the alleged activities must have a sufficiently disruptive effect to influence the freedom of association of a union's members. The common denominator of these behaviours is a certain level of seriousness and force and an intention to exert or to try to exert some control. However, the Board heard no evidence of that nature during the hearings. On the contrary, the Board notes that the bargaining unit members freely made their choice during the merge vote.

[122] Thus, the evidence does not lead to a finding that section 96 was violated. Consequently, the Board dismisses Innotech's complaint alleging violation of section 96.

V. Conclusion

[123] The Board acknowledges that, in light of the circumstances surrounding the commitment between the Association and Unifor, it was legitimate for the employer to initially have some concerns regarding the Association's compliance with its obligations as the exclusive bargaining agent for Innotech's employees. That said, after examining the evidence and the parties' submissions, the Board considers that the unions did not violate sections 95(a), 95(b) and 96 of the *Code* by concluding the 2014 and 2016 Agreements. Therefore, the Board has no reason to intervene and dismisses the present complaint.

Translation

Annie G. Berthiaume
Vice-Chairperson