



Order No.: 11721-U

IN THE MATTER OF THE

Canada Labour Code

- and -

General Teamsters, Local Union No. 362,

applicant,

- and -

A.S.P. Incorporated,
Burlington, Ontario,

employer.

WHEREAS the Canada Industrial Relations Board (the Board) has received an application for certification pursuant to section 24(1) of the *Canada Labour Code* (the *Code*) from the applicant seeking certification as bargaining agent for a unit of employees of A.S.P. Incorporated;

AND WHEREAS the employer disputed the bargaining unit proposed by the applicant on the basis that the incumbents in the positions of leads and supervisors perform management functions and thus are ineligible for inclusion in the proposed bargaining unit;

AND WHEREAS the applicant disputed that the incumbents perform management functions and submitted that they are employees pursuant to section 3(1) of the *Code* employed in what it proposed to be a unit of supervisory employees appropriate for collective bargaining pursuant to section 27(5) of the *Code*;

AND WHEREAS the parties provided the Board with fulsome submissions and the Board provided them with the opportunity to provide additional submissions on the duties and responsibilities of the disputed positions and related case law;

AND WHEREAS, following investigation of the application and consideration of all the submissions of the parties concerned and the facts of this case, the Board was not persuaded by the employer's argument that the positions in dispute perform management functions and has determined that the incumbents of the positions of leads and supervisors are employees within the meaning of the *Code*;

AND WHEREAS the Board has also determined that the incumbents do not exercise significant discretion or autonomy in core management functions or duties such as directing or making recommendations that impact on decisions to hire, promote, discipline or terminate employment;

AND WHEREAS in the present case, the employees who are supervised by the incumbents are members of a different bargaining unit and are specifically excluded from the bargaining unit proposed by the applicant and the Board therefore rejects the employer's argument that a certification of the union for a bargaining unit comprised of the incumbents would be detrimental to sound labour relations and would not create an effective bargaining unit structure;

AND WHEREAS the Board was not persuaded that the incumbents were not included in Board order no. 11459-U due to their performance of managerial functions, and that in fact, in that application, the applicant never sought their inclusion in the bargaining unit and the Board never made a ruling as to whether the nature of their work was "managerial" and thus excluded from certification, or "supervisory" and subject to certification pursuant to section 27(5) of the *Code*;

AND WHEREAS section 27(5) of the *Code* expressly gives the Board the authority to grant certification for a bargaining unit of employees such as the incumbents whose duties include the supervision of others and the Board has determined that the proposed bargaining unit is appropriate for collective bargaining pursuant to section 27(5) of the *Code*;

AND WHEREAS the Board has found the applicant to be a trade union within the meaning of the *Code*, has determined the unit described hereunder to be appropriate for collective bargaining and is satisfied that a majority of the employees of the employer in the unit wish to have the applicant trade union represent them as their bargaining agent.

Order No.: 11721-U

NOW, THEREFORE, it is ordered by the Canada Industrial Relations Board that the General Teamsters, Local Union No. 362 be, and it is hereby certified to be, the bargaining agent for a unit comprising:

all employees of A.S.P. Incorporated working as leads/supervisors at the Calgary International Airport, **excluding** those under United Food and Commercial Workers Canada Union, Local No. 401 Order No. 11459-U, and office and clerical staff.

ISSUED at Ottawa, this 11th day of May, 2022, by the Canada Industrial Relations Board.

Sylvie M.D. Guilbert
Vice-Chairperson

Reference: File No. 035472-C