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Reasons for decision

Syndicat National des Convoyeur(e)s de Fonds
(SNCF) - Canadian Union of Public Employees, Local
3812,

applicant,

and

Garda Cash-in-Transit Limited Partnership; Garda
Cash-in-Transit Corporation,

employers,

and

Teamsters Local Union No. 419,

bargaining agent.

Board File: 26395-C

Neutral Citation: 2010 CIRB **503**

March 19, 2010

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*). A hearing was held on January 25, 2010, in Montréal, Quebec.

Appearances

Mr. Jacques Lamoureux, for the Syndicat National des Convoyeur(e)s de Fonds (SNCF) - Canadian Union of Public Employees, Local 3812;

Mr. Peter Engelmann, Ms. Marisa Pollock, and Ms. Kelly Doctor, for Teamsters Local Union No. 419;

Mr. Michel Brisebois, for Garda Cash-in-Transit Limited Partnership and Garda Cash-in-Transit Corporation.

I - Nature of the Application

[1] This case concerns the scope of a trade union's bargaining unit in the armoured car industry. The work of the bargaining unit involves the transportation of currency and securities.

[2] On July 11, 2007, the Syndicat National des Convoyeur(e)s de Fonds (SNCF) - Canadian Union of Public Employees, Local 3812 (CUPE), filed an application which raised several issues, including the scope of its bargaining certificate. On October 2, 2007, CUPE filed an amended application requesting that the Board also issue a single employer declaration under section 35 of the *Code*.

[3] Supplemental pleadings closed in February 2008. The investigating officer produced her report on April 1, 2008, and a supplementary report on November 26, 2008.

[4] The panel was initially seized of the application on April 7, 2008 and attempted to set up a case management conference for May 30, 2008 and a hearing for July 2-4, 2008. Due in part to the time of the year, the parties were unavailable until September. The Board rescheduled the case management conference for September 15, 2008 and the hearing for December 15-18, 2008.

[5] On December 12, 2008, the Teamsters required an adjournment due to illness. The Board consequently scheduled the dates of February 26-27, 2009 for the hearing.

[6] The employer was not available for those dates. The Board then rescheduled the hearing for May 12-13, 2009.

[7] At the parties' request, the May hearing dates were adjourned to the dates of January 25-26, 2010, so that the parties could explore possible settlement. As a result of the parties' efforts to streamline the evidence, the hearing was completed in one day on January 25, 2010.

[8] Group Garda is described as a group of provincial and federal corporations. Group Garda has made a series of acquisitions over the years of both union and non-union businesses. Two of these businesses are relevant to CUPE's application.

[9] A Group Garda corporation in Quebec is named Garda Cash-in-Transit Limited Partnership. It has gone through a series of name changes. For ease of reference only, it will be referred to as Garda Quebec. The second corporation is named Garda Cash-in-Transit Corporation, hereinafter called Garda Ontario.

[10] CUPE is the bargaining agent for a bargaining unit at Garda Quebec comprised of:

all employees of Société en commandite Garda Sécur, excluding dispatchers, office clerks, vault head cashier, technical support employees, researchers, road supervisors, building maintenance employees and storekeepers.

(Board order no. 8585-U)

[11] On May 11, 2007, the Ontario Labour Relations Board (OLRB) certified the Teamsters Local Union No. 419 (Teamsters), for a bargaining unit at Garda Ontario which was involved in the transportation of currency and securities.

[12] In the present matter, CUPE asked the Board to interpret the scope of its current bargaining unit at Garda Quebec and declare that it applied to the Ontario-based employees engaged in the armoured car industry with Garda Ontario. The Teamsters argued, conversely, that CUPE's certificate, while not explicitly restricted to Quebec, was nonetheless contextually limited, given its history.

[13] The employers had raised other issues in their pleadings, including:

- i) preliminary objections about the Board's jurisdiction over the Toronto-based employees;
- ii) whether the Board could issue a single employer declaration if Garda Ontario fell within provincial jurisdiction; and
- iii) whether CUPE's alleged delay in bringing its application disentitled it to seek the relief it claimed (doctrine of *laches*).

[14] In the interest of efficiency, the Board decided first to examine the scope of CUPE's bargaining unit. This decision is limited to determining whether the scope of CUPE's bargaining unit could apply to employees working in the armoured car industry at Garda Ontario.

II - Facts

[15] The parties' written submissions, as well as the evidence given at the January 25, 2010 hearing, provided the material background facts which have assisted the Board in determining the scope of CUPE's bargaining unit.

[16] In 1999, the Board found that a company called *Sécur Inc.* (*Sécur*), which transported currency and securities, fell within federal jurisdiction because of its extraprovincial transportation activities (see *Sécur Inc.*, 1999 CIRB LD 131).

[17] On or about October 16, 2000, Group Garda purchased an Ontario-based business called *Riscon Services Ltd.* (*Riscon*). Part of *Riscon*'s business involved currency and securities transportation. It appeared from evidence at the hearing, however, that that particular business involved only one armoured truck and three employees. *Riscon* grew this business over time following the acquisition.

[18] In March of 2007, Riscon was divided up. Its main portion, which involved airport pre-boarding screening, became Garda Security Screening Inc. Its currency and securities transportation activities were rolled into another corporation, Garda Ontario.

[19] On February 15, 2001, in *Sécur Inc.*, 2001 CIRB 109 (*Sécur 109*), the Board combined Sécur's diverse bargaining units into a single unit.

[20] In September 2003, Group Garda, via Garda Quebec, purchased Sécur from the Fédération des Caisses Desjardins. Sécur had been the cash handling subsidiary of Caisses Desjardins.

[21] The evidence at the January 25, 2010, hearing was not controversial. There is no dispute that Sécur, whether when it operated as a subsidiary of Caisses Desjardins or after it had been purchased by Group Garda, had branch offices exclusively in Quebec. It had transportation routes that crossed provincial boundaries, thus bringing it within this Board's jurisdiction.

[22] The Board heard evidence about employees of the Gatineau branch of Sécur who made frequent business trips into eastern Ontario, especially to Ottawa. That evidence demonstrated that all employees of Sécur went to work at their Quebec branches where they collected their firearms, the securities to be transported and their armoured vehicles.

[23] For those employees who crossed a provincial boundary, they would make their deliveries or pick-ups, but returned at the end of their shift to their local Quebec branch.

[24] The activities which existed at Sécur in its Caisses Desjardins days continued after the purchase by Group Garda, up to and including the current time.

[25] The Board heard evidence that Sécur had two Ontario-based clients for whom it had done some work. Over the course of a month, during a strike in the late 1990s, there were a few trips to Brampton to transport gold. In the late 1990s, there was also a single trip to Toronto in order to transport valuables for a client to Ottawa.

[26] Other than these exceptional occurrences, however, the business of Sécour remained situated in Quebec, even though some of its routes extended into Ontario or New Brunswick.

[27] In 2007, the Teamsters initially filed an application with this Board to represent the employees working for Garda Ontario (the former Riscon). The Teamsters apparently withdrew that application after Garda contested the Board's jurisdiction. The Teamsters later filed a certification application with the OLRB, which granted them a certification for the employees at Garda Ontario.

III - Control over Bargaining Unit Descriptions

[28] The Board, contrary to the practice of many of its provincial counterparts, remains seized of the description and scope of all bargaining units it issues. The Board's model follows that found in Quebec labour law: see generally *Teleglobe Canada* (1979), 32 di 270; [1979] 3 Can LRBR 86; and 80 CLLC 16,025 (partial report) (CLRB no. 198); and *Canadian Pacific Limited* (1984), 57 di 112; 8 CLRBR (NS) 378; and 84 CLLC 16,060 (CLRB no. 482).

[29] While in Ontario parties are generally free to modify their bargaining unit description, and indeed, the original certification is often described as being "spent" after it is issued, parties do not have a similar freedom federally.

[30] Instead, if there are disputes about whether an employee falls within the scope of a bargaining unit, a party can bring that dispute to the Board, as CUPE did in this case, pursuant to section 18 of the *Code*:

18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

[31] Similarly, if a question arises during an arbitration about which employees are bound by an existing collective agreement, the *Code* at section 65 allows the parties to ask the Board to determine the question:

65.(1) Where any question arises in connection with a matter that has been referred to an arbitrator or arbitration board, relating to the existence of a collective agreement or the identification of the parties or employees bound by a collective agreement, the arbitrator or arbitration board, the Minister or any alleged party may refer the question to the Board for determination.

(2) The referral of any question to the Board pursuant to subsection (1) shall not operate to suspend any proceeding before an arbitrator or arbitration board unless the arbitrator or arbitration board decides that the nature of the question warrants a suspension of the proceeding or the Board directs the suspension of the proceeding.

[32] Because the Board retains jurisdiction over the bargaining certificates it issues, it can rationalize bargaining units, particularly if the Board has certified multiple bargaining units over time for one employer. The Board carried out just such an exercise when it rationalized *Sécur*'s bargaining units in 2001 (see *Sécur 109, supra*). Section 18.1 of the *Code* governs this process:

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

(2) If the Board reviews, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board

(a) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and

(b) may make any orders it considers appropriate to implement any agreement.

(3) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board determines any question that arises and makes any orders it considers appropriate in the circumstances.

...

[33] The Board's analysis is straightforward when considering if employees fall within the scope of an existing unit. Generally, if new employees fall within the original scope of a bargaining unit, then they will be added to that bargaining unit without a requirement that the trade union demonstrate majority support among the employees to be added. The union will simply need to establish that it holds overall majority support in the bargaining unit. A vote could also be ordered.

[34] There is an exception to this rule if the number of employees to be added would impact the overall majority the trade union already holds in the original bargaining unit (see *Viterra Inc.*, 2009 CIRB 472, at paragraph 27).

[35] Conversely, where a trade union seeks to add employees to its existing bargaining unit, but that addition would enlarge the scope of the bargaining unit, then the Board has required that the trade union demonstrate majority support among the group to be added.

[36] In such a case, while the Board will accept that the trade union maintains a majority in its existing bargaining unit, it requires the trade union to establish majority support among the new employees to be added, just as it would if the same trade union filed an independent certification application to represent that new group. This is commonly known as the “double majority” rule.

[37] In essence, a trade union is not obliged to sign up every new employee who falls within the scope of its existing bargaining unit. However, if a trade union wants to represent out-of-scope employees, then it must follow the recognized rules for certification and sign up a majority of those employees.

IV - Analysis and Decision

[38] The determination of the scope of the trade union’s bargaining unit is more art than science. CUPE argued forcefully that if Sécour had decided to expand its business into Toronto, then there would have been no issue but that the bargaining unit the Board had granted it would cover that additional work. CUPE maintained that its bargaining unit description had no geographic limitation, which meant that the Toronto employees performing armoured car services must necessarily be covered by the scope of its bargaining unit.

[39] The Teamsters, on the other hand, argued that a territorial limitation for CUPE’s bargaining unit existed, given the context in which the Board originally determined the description of Sécour’s bargaining unit. When the Board certified Sécour, Sécour only operated in Quebec. The Teamsters also noted that, from a corporate perspective, Garda Ontario had always existed as a wholly separate corporation from Garda Quebec.

[40] This resulted from the fact that both Sécour and Riscon had operated as separate businesses before being purchased by Group Garda.

[41] The Board has concluded that the current scope of CUPE's bargaining unit would not extend to work being performed outside Quebec. The fact the Board found that Sécour's extraprovincial routes brought it within federal jurisdiction does not mean that Sécour's bargaining unit was therefore open-ended.

[42] The Board is satisfied that prior to Group Garda purchasing Sécour in 2003, a transaction which clearly signalled an enhanced interest in the armoured car business, Group Garda had already purchased Garda Ontario (Riscon), which had a small, but pre-existing, armoured car operation in Toronto.

[43] Garda Ontario has apparently continued to grow that business to such an extent that the Teamsters decided to seek the support of the employees for certification. The Board notes that Garda Quebec carries out the exact same functions it has traditionally done, with the same branch offices and their extraprovincial routes.

[44] In sum, the Board is not convinced that the bargaining unit at Sécour, which transferred over to Garda three years after Garda's purchase of Garda Ontario (Riscon), could retroactively apply to Riscon's original activities and the growth of those activities in Toronto.

[45] The Board found in *Viterra Inc.*, 2009 CIRB 442, that a certificate which did not contain an explicit geographic limit could still be contextually limited. A similar reasoning applies to the scope of CUPE's bargaining unit in this case.

V - Conclusion

[46] The Board has concluded that the scope of CUPE's bargaining unit at Garda Quebec would not apply to the employees working in Toronto for Garda Ontario. The constitutional issue regarding whether the Board has jurisdiction over the Toronto employees has not been determined in the instant decision. Neither has the Board made any determination about CUPE's request to make Garda Quebec and Garda Ontario subject to a single employer declaration.

[47] Other issues raised in CUPE's application remain outstanding. As a result of this decision, the Board gives the parties 60 days to file written submissions regarding the next steps, if any, on this matter.

Graham J. Clarke
Vice-Chairperson