

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100120**

**Dockets: A-579-08  
A-110-09**

**Citation: 2010 FCA 19**

**CORAM: BLAIS C.J.  
LÉTOURNEAU J.A.  
NOËL J.A.**

**BETWEEN:**

**CANADA POST CORPORATION**

**Applicant**

**and**

**CANADIAN UNION OF POSTAL WORKERS**

**Respondent**

Heard at Ottawa, Ontario, on January 20, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on January 20, 2010.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on January 20, 2010.)**

**NOËL J.A.**

[1] These are two applications for judicial review in respect of a decision dated October 21, 2008 of the Canada Industrial Relations Board (the Board) certifying the Canadian Union of Postal Workers (the respondent union) as a bargaining agent for a unit comprising “all employees of Canada Post Corporation exercising the function of delivery of mail on rural and suburban services routes, excluding supervisors and those above”.

[2] On January 29, 2009, the Board issued Reasons for Order (the Reasons) at the request of the Canada Post Corporation (the applicant) wherein the Board explained that membership cards signed many years before the date of the application for certification and the consistent payment of union dues by employees under a voluntarily recognized collective agreement satisfied the provisions of sections 30 and 31 of the *Canada Industrial Relations Board Regulations, 2001, SOR/2001-520* (the Regulations) and constitute valid evidence that the employees wished to have the respondent union represent them. The Board also dismissed the applicant's application for reconsideration of the order and declined to amend the bargaining unit description to reflect the agreement reached by the parties in 2003 as to the scope of the appropriate bargaining unit.

[3] The first judicial review application was brought against the original decision granting, without reasons, the application for certification brought by the respondent union (A-579-08). The second judicial review application was brought against the decision of January 29, 2009, wherein the Board declined to reconsider its earlier decision, and provided reasons for allowing the respondent's application (A-110-09).

[4] By order dated April 23, 2009, the two judicial review applications were consolidated, file A-579-08 being designated as the lead file. In conformity with this order, these reasons dispose of both applications, the original being filed in A-579-08 and a copy thereof in file A-110-09.

[5] As a preliminary matter, the respondent submits that pursuant to subsection 22(1) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code) and subsection 18.1(4) of the *Federal Courts*

*Act*, R.S.C. 1985, c. F-7, judicial review of the Board's decision does not extend to errors of law. In light of the fact that the errors alleged by the applicant in the respective Notices of Application constitute errors of law, the respondent submits that the judicial review applications should be summarily dismissed on this basis.

[6] It is not necessary to address this issue because even if the errors alleged to have been committed are properly subject to review, it has not been shown that our intervention would be warranted.

[7] The attack against the decision of the Board boils down to this: it was not reasonable for the Board to rely on union membership cards signed many months, even years, before the date of the application to establish the employees' wishes to adhere to the respondent union. In the same vein, it was not reasonable for the Board to rely on the payment of union dues since the employees were bound to make such payment regardless of their wish to adhere or not to adhere to the respondent union. The applicant argues that is particularly so when regard is had to section 31 of the Regulations.

[8] As to the first argument, paragraph 28(c) of the Code provides the Board with the discretion to determine the employees' wish to have the trade union represent them "as of the date of filing of the application, or as of such other date as the Board considers appropriate ...". It follows that there is no temporal limitation imposed on the Board in assessing the intention of the employees. In this respect the Board said (Reasons, para. 26):

With respect to the age of some of the membership cards, the Board determined that the wording of section 31(1)(a) of the Regulations does not impose a temporal limitation on the validity of membership applications, as does section 31(1)(b). Accordingly, the Board found that there is no constraint on its ability to accept the membership applications submitted by the union. While the Board would ordinarily prefer that membership applications be relatively recent, in the exceptional circumstances of this case, where the union organized the mail contractors, filed an application with the Board and then reached an agreement with the employer for voluntary recognition, the Board is prepared to find that the membership applications submitted by the union are still valid and may be used as evidence to demonstrate employees' wishes for the purpose of section 28 of the Code. The fact that the employer confirmed in 2003 that CUPW had satisfied it that the union had majority support, coupled with the fact that the Board received no representations whatsoever from any of the members of the proposed bargaining unit, despite the fact that notice of the application was posted in each workplace for the requisite period of time, supports the Board's conclusion that the employees continue to wish to be represented by the union.

[9] This conclusion has not been shown to be unreasonable.

[10] As to the second argument, the Board noted that the types of admissible evidence, as to the wish of employees to join a particular trade union, set out in article 31 of the Regulations, are not exhaustive. According to the Board they do not limit the evidence that the Board may consider in assessing the wishes of the employees (Reasons, para. 28):

The Board is given considerable latitude as to how it determines employee wishes, and the provisions of section 31 of the Regulations, while providing examples of acceptable evidence, do not limit the Board's latitude in this regard. In *St. Croix Stevedores and Affiliates*, *supra*, the Board conducted an extensive analysis of its discretion with respect to determining employee wishes and indicated that the evidence of ongoing membership and continuous payment of membership dues by means of dues check-off can be appropriate evidence of employee wishes.

[11] The Board went on to hold (Reasons, para. 29):

Given the exceptional circumstances of this case, including the fact that the union had already demonstrated that a majority of employees in the bargaining unit wished to be represented by the union in 2003, withdrew its original certification application after concluding a voluntary recognition agreement with the employer and entered into a collective agreement that was ratified by the employees, the Board was satisfied that, in this case, the evidence of the payment to the union by means of a check-off provision in the collective agreement was acceptable as membership evidence. The Board therefore determined that the membership evidence demonstrated that a majority of the employees in the bargaining unit wish to be represented by the union.

[12] Again, this conclusion has not been shown to be unreasonable.

[13] Finally, with respect to the Board's refusal to describe the bargaining unit by reference to the agreement reached in 2003, the Board properly notes that it is not limited by the description of the proposed unit contained in a union's application for certification nor is it bound by any agreement between the parties (Reasons, para. 20). The Board has explained extensively why it chose not to reproduce the wording of the agreement in certifying the bargaining unit (Reasons, paras. 21 to 24). We can detect no error in this regard.

[14] Both judicial review applications will be dismissed with one set of costs in file A-579-08.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:**

A-579-08  
A-110-09

**STYLE OF CAUSE:**

Canada Post Corporation v.  
Canadian Union of Postal  
Workers

**PLACE OF HEARING:**

Ottawa, Ontario

**DATE OF HEARING:**

January 20, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:**

Blais C.J.  
Létourneau J.A.  
Noël J.A.

**DELIVERED FROM THE BENCH:**

Noël J.A.

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