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Citation: 2004 PSSRB 182



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

Applicant

and

TREASURY BOARD

Employer

and

CANADIAN AIR TRAFFIC CONTROL ASSOCIATION

Bargaining Agent



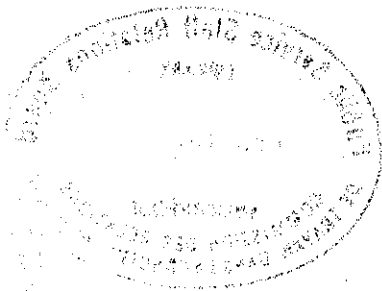
**RE:** Application for a Declaration of Successor Rights under  
Section 49 of the Public Service Staff Relations Act

**Before:** Yvon Tarte, Chairperson

**For the Applicant:** Lewis Gottheil, Counsel, National Automobile, Aerospace,  
Transportation and General Workers Union of Canada (CAW-  
Canada)

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(Decided without an oral hearing)



## DECISION

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[1] This decision concerns an application dated August 26 2004, by the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) under section 49 of the *Public Service Staff Relations Act* (the Act) to have the Board recognize it as the successor to the Canadian Air Traffic Control Association (CATCA), further to a merger agreement between the parties.

[2] Section 49 of the Act provides as follows:

### *Successor Rights*

*49.(1) Where, by reason of a merger or an amalgamation of employee organizations or a transfer of jurisdiction among employee organizations otherwise than as a result of a revocation of certification, an employee organization succeeds another employee organization that, at the time of the merger, amalgamation or transfer of jurisdiction, is a bargaining agent, the successor shall be deemed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement, arbitral award or otherwise.*

*(2) Where, on a merger, amalgamation or transfer of jurisdiction referred to in subsection (1), any question arises concerning the rights, privileges and duties of an employee organization under this Act or under a collective agreement or arbitral award in respect of a bargaining unit or an employee therein, the Board, on application to it by the employer or any person or employee organization concerned, shall determine what rights, privileges and duties have been acquired or are retained.*

*(3) Before making a determination under subsection (2), the Board may make such inquiry or direct that such representation votes be taken among the employees to be affected by the determination as the board considers necessary, and in relation to the taking of any such vote the provisions of subsection 36(3) apply.*

[3] Copies of the application under section 49 of the Act were sent by the Board to both respondents, Treasury Board of Canada Secretariat and the Canadian Air Traffic Control Association, on September 14, 2004, and both respondents were asked to provide the Board with their comments regarding the matter by no later than September 28, 2004. The employer responded that it had no comments to make and CATCA filed no response.

[4] At this point, a brief review of the factual background involved in this application is in order.

[5] On December 18, 1962, the respondent CATCA was incorporated by letters patent. Further, on November 28, 1967, a certificate was issued by the Public Service Staff Relations Board (the Board) to CATCA, pursuant to the provisions of the Act, as a bargaining agent for all employees of Her Majesty, in right of Canada, as represented by the Treasury Board, in the Air Traffic Control Group.

[6] Following the commercialization of the Canadian civil air navigation system and the incorporation of NAV Canada as a vehicle through which civil air navigation services in Canada would be delivered, only a small group of employees of Treasury Board remained employed by the Treasury Board in the Air Traffic Control Group. This small group of employees has been defined in Part I of the Canada Gazette of March 27, 1999, and by virtue of the amended certificate issued by the Board and dated June 7, 1999, CATCA was certified to represent these same employees as a bargaining agent.

[7] In June 1999, the leadership of CATCA was directed, by Resolution No. 65 of the bargaining agent's national convention, to strike a committee and have that committee recommend a strategy to the membership with respect to a possible merger with another bargaining agent, as well as the possible identity of that merger partner.

[8] Resolution No. 65, which served to provide a mandate to the bargaining agent's merger committee, stated as follows:

*Be it resolved that the Board of Directors appoint a merger/affiliation committee.*

*This committee shall be inclusive of the President, as a non-voting member, and one representative from each region, selected from a list submitted to the Board of Directors by each regional delegation at this convention by June 23, 1999. The membership of this committee shall be determined by the Board of Directors on or before July 1<sup>st</sup>, 1999.*

*This committee is to investigate potential mergers(s)/affiliation(s) with the CAW and/or other unions, and to make a recommendation to the membership no later than 60 days after this round of collective bargaining is completed. Minority positions must be presented.*

*If the recommendation is to initiate a merger/affiliation, and is approved by referendum, then the committee will seek to negotiate a satisfactory agreement without undue delay. Any such agreement shall be subject to the approval of the Board of Directors, and ratification of the membership by referendum.*

[9] Over the course of the following months, the merger committee interviewed representatives of various national and international bargaining agents. The merger committee prepared a merger report and made a recommendation to the membership that a merger with another bargaining agent take place.

[10] A referendum vote designed to approve or reject the recommendation of the merger committee was organized to occur on or about January 17, 2000.

[11] The ballot for this first referendum vote posed the following question:

*Are you in favour of seeking a merger agreement between CATCA and another union? - Yes or No.*

[12] Balloting with respect to the above-mentioned referendum occurred on a branch/facility basis. No proxy votes were permitted. A member/voter had to sign a voter list upon receiving a ballot. The membership of CATCA voted in favour of a merger with an as yet unidentified merger partner. Thereafter, the merger committee had and exercised its mandate to select a specific union partner for the merger process.

[13] After the first referendum, it became clear that a choice for a merger partner would be framed as a selection between the applicant and NATCA, or the National Air Traffic Controllers Association, an American trade union representing American air traffic controllers. By May 2000, agreements in principle with both the applicant and NATCA were completed. However, NATCA subsequently declined to pursue the merger process, and on June 19, 2000, a merger agreement between the applicant, CAW-Canada and CATCA was completed and signed by representatives of the respective parties. A second referendum vote was conducted, commencing on July 27, 2000, among the membership of CATCA. This vote canvassed the wishes of the membership pertaining to a merger with CAW-Canada. Fifty-two percent of the membership voted to approve a merger with the applicant, CAW-Canada.

[14] In May 2001, a convention of CATCA delegates assembled in Ottawa, Ontario. The convention carried Resolution Nos. 33 and 34, as moved by the Board of Directors of CATCA. These resolutions, by their terms, passed and confirmed Bylaw No. 2 of CATCA and, in turn, Bylaw No. 2 enacted the merger between CATCA and the CAW-Canada.

[15] Resolution No. 33 stated as follows:

*WHEREAS CATCA is a union certified as the exclusive bargaining agent for all air traffic controllers in Canada ("Air Traffic Controllers");*

*AND WHEREAS the delegates to the National Convention 1999 established a merger committee to explore merger options with the Canadian Auto Workers ("CAW");*

*AND WHEREAS CATCA and CAW entered into a merger agreement in June 2000 which passed by a majority of CATCA members at the referendum held in August 2000;*

*NOW THEREFORE BE IT RESOLVED THAT By-Law No. 2 in the form annexed is hereby confirmed as a By-Law of CATCA.*

Resolution No. 34 provided:

*A By-law effecting the completion of the merger of CATCA and the Canadian Auto Workers ("CAW") Canada.*

*Be it enacted as a By-law of CATCA that the merger be approved under the following terms and conditions:*

*1. Effective July 1, 2001 (the "Effective Date") CATCA shall transfer to the CAW-Canada all of the rights, privileges and duties of CATCA under the Canada Labour Code and/or Public Service Staff Relations Act and/or under Collective Agreements;*

*2. As of the Effective Date, CATCA by-law No. 1 shall be amended as follows:*

*(i) Amend Article 4.1 by deleting: "and to act as a statutory bargaining agent for members of the Association employed in the provision of air navigation services" and adding "to support the activities of bargaining units composed in whole or in part of persons who are members of the Association";*

(ii) Amend Article 4.2 by deleting: "to establish through collective bargaining the best possible wage standards, job security and the optimum conditions of employment for members of the Association."

3. All other terms and conditions of the Merger Agreement signed June 19, 2000, as amended by the amending agreement dated May 27, 2001, and shall be implemented.

[16] At the end of the said convention, authorized representatives of the CAW-Canada and CATCA signed a supplementary agreement which amended, in part, the June 19, 2000, merger agreement. The supplementary agreement signed between them provided details regarding the interpretation and implementation of the merger process. Both agreements confirm the merger of the two bargaining agents and, specifically, the transfer of bargaining rights from CATCA to the CAW-Canada.

[17] Section C of the June 19, 2000 merger agreement, entitled Bargaining Rights, provides as follows:

1. As of the Effective Date, and thereafter, all collective bargaining rights of CATCA acquired by certification, recognition or by the provisions of a collective agreement or by any other means, shall be transferred to or vested in CAW-Canada, provided, however, that in the event any duly qualified lawful authority shall declare that any such collective rights have not been transferred, or, in the judgment of the National President of CAW-Canada, the acquisition of such bargaining rights are delayed or contested before a duly qualified lawful authority, such bargaining rights shall continue to be held in the name of CATCA, which shall remain in existence so long as it is necessary for the purpose of protecting bargaining rights affected by this Merger Agreement.

2. Those bargaining rights not transferred or delayed or contested in transfer shall be administered, as before by CATCA with the intent they do not lapse or become extinguished. In such an event, CATCA shall continue to be administered by the officers thereof in accordance with the CATCA By-Laws, the extent required to preserve the bargaining rights affected by this Merger Agreement. CATCA shall continue to administer the collective agreement as agent for and on behalf of CAW-Canada until CAW-Canada has acquired the collective bargaining rights in question, according to law.

*3. CAW-Canada agrees that if the Local Union chartered for CATCA is amalgamated with another Local Union (Merged Local Union), that the bargaining units will be subject to a separate ratification process (vote) for purposes of ratifying a collective agreement. For greater certainty, it is clearly understood that all components of such a new Merged Local Union must ratify a collective agreement for it to be accepted.*

[18] Article 2 of the supplementary agreement dated May 27, 2001, provides, in part, as follows:

*2. On the Effective Date, CATCA shall transfer to the CAW-Canada all of its bargaining rights, including the right to receive dues and all other rights under the Collective Agreement. These rights shall be administered by a local union (the "Union") to be chartered by CAW-Canada.*

[19] At a meeting held on July 9, 2001, at Port Elgin, Ontario, the National Executive Board of the CAW-Canada approved the merger between the CAW-Canada and CATCA and issued a charter to a new local union known as the Canadian Air Traffic Control Association (CATCA) CAW-Canada Local 5454.

[20] Article 8 of the Constitution of the Applicant CAW-Canada, effective July 9, 2001, stated as follows:

*If a majority of National Executive Board members agree, the National Executive Board may approve a merger with another trade union or bring another union into CAW-Canada, as long as the action does not affect CAW-Canada's identity or standing in the trade union movement.*

[21] With the approval of the CAW-Canada National Executive Board and the issuance of a Charter, all legal steps required in order to give effect to a merger of the two bargaining agents and a transfer of bargaining rights to the applicant have, according to the applicant, occurred.

[22] On the basis of the file before it, the Board recognizes that the Canadian Air Traffic Control Association and the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) have merged and that the applicant (CAW-Canada) is the successor to the CATCA. The Board also agrees that CAW-Canada is an employee organization within the meaning of section 2 of the Act. The CAW-Canada has shown that a majority vote of employees in the bargaining unit supports the merger.



[23] The merger agreement indicates that the bargaining rights of CATCA in respect of the Air Traffic Control Group and all of its rights, privileges and duties under any statute or agreement are transferred to the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada).

[24] For these reasons, the application is allowed and CAW-Canada is certified as the bargaining agent for the Air Traffic Control Group.

[25] An amended certificate will be issued.

**Yvon Tarte,  
Chairperson**

OTTAWA, December 23, 2004.

