

Date: 20131206

File: 536-02-0003

Citation: 2013 PSLRB 158



*Public Service
Labour Relations Act*

Before a panel of the Public
Service Labour Relations Board

BETWEEN

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL
WORKERS UNION OF CANADA, LOCAL 2182 (CAW LOCAL 2182)**

Applicant

and

TREASURY BOARD

Respondent

Indexed as

*National Automobile, Aerospace, Transportation and General Workers Union of Canada,
Local 2182 (CAW Local 2182) v. Treasury Board*

In the matter of an application, under subsection 79(2) of the *Public Service Labour Relations Act*, for a determination of the rights, privileges and duties of an employee organization

REASONS FOR DECISION

Before: David Olsen, a panel of the Public Service Labour Relations Board

For the Applicant: Anthony Dale, counsel

For the Respondent: Natalie Aline Caron, Treasury Board Secretariat

Decided on the basis of written submissions,
filed October 7 and 24 and November 21, 2013.

REASONS FOR DECISION

Application before the Board

[1] On October 7, 2013, counsel for the National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 2182 (CAW Local 2182) applied to the Public Service Labour Relations Board (“the Board”) for a review of an order pursuant to sections 43 and 79 of the *Public Service Labour Relations Act* (“the Act”). In accordance with section 43 of the *Act*, the Board may “. . . review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.” As for section 79 of the *Act*, it deals with successor rights and obligations.

[2] In its application, CAW Local 2182 requested that the Board review and amend its certificate, declare that Unifor Local 2182 is the successor of CAW Local 2182, and declare that Unifor Local 2182 has acquired all of the rights, privileges and duties of CAW Local 2182, including all rights, privileges and duties set out in the certificate and in the collective agreement between the Treasury Board and CAW Local 2182.

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

[4] The CAW Local 2182 is, pursuant to the *Act*, the certified bargaining agent for the Radio Operations Group (RO). This bargaining unit has, since 1984, been continuously represented by the CAW Local 2182 and its predecessors, when a certificate was issued to the Canadian Association of Professional Radio Operators (CAPRO) in PSSRB File No. 143-02-225 (19841218) for the Radio Operations Group bargaining unit. Further to legislative changes, a new certificate was issued in 1999, amending the description of the bargaining unit (PSSRB File No. 142-02-328 (19990519)). In 2001, another certificate was issued (2000 PSSRB 113) when CAPRO applied to the Board to recognize its name change to Marine Communications and Traffic Services Association (MCTSA). Lastly, when the MCTSA merged with the National Automobile, Aerospace, Transportation and General Workers Union of Canada as Local 2182, the Board, in 2001 PSSRB 10, declared that it was the successor of the MCTSA pursuant to section 49 of the former *Public Service Staff Relations Act* (PSSRA).

[5] Unifor is a newly established trade union formed by the merger of two predecessor trade unions, one of which is the National Automobile, Aerospace, Transportation and General Workers Union of Canada. The second of these

predecessor trade unions was the Communications, Energy and Paperworkers Union of Canada (CEP).

[6] The two trade unions engaged in preliminary discussions in late 2011 and early 2012 with respect to joining together to form a new Canadian union. These preliminary steps led the National Executive Board of each union to unanimously approve a process to continue discussions. As contemplated by the “Protocol Agreement,” a CAW/CEP Proposal Committee was struck, consisting of the senior leadership from both organizations. The purpose of the committee was to discuss issues related to the establishment of the new union. Its report was delivered to all CAW-Canada locals and was released to the media and posted on a temporary web page accessible through the websites of each organization.

[7] In April 2012, approximately 700 democratically elected delegates attended a meeting of the CAW Council, and a recommendation/resolution was unanimously approved, endorsing the discussions undertaken with CEP with respect to the formation of a new union. In August 2012, the Proposal Committee issued its final report encapsulating the work of the Committee, establishing a detailed template for the desired new union and proposing a recommendation/resolution to be adopted by the CAW-Canada and CEP at their respective conventions, which stated that the recommendation of the Committee was adopted and that the unions would work cooperatively to create a new Canadian union.

[8] In August 2012, CAW-Canada held a CAW Constitutional and Collective Bargaining Convention, at which nearly 1000 democratically elected delegates voted unanimously in favour of the resolution to create a new union in concert with CEP. In October 2012, the Constitutional Convention of CEP was held, and the resolution expressed in the Proposal Committee’s final report was put to the delegates, with over 90% of those in attendance voting in favour of the resolution.

[9] The proposed draft constitution of the new union, proposed merger agreement and supporting policies were considered by the CAW-Canada’s National Executive Board in March 2013, and with certain minor amendments to the constitution, it approved a slightly revised version of the documents as the basis for the path forward. Likewise, the same foundation material was placed before CEP’s National Executive Board in March 2013, and with minor changes proposed, it also voted to support the foundation documents as the way forward for the new union.

[10] Based on the feedback received, certain changes and clarifications were made to the draft constitution, and in May 2013, the Proposal Committee met for a final meeting to review the draft constitution. It was then put before the CAW-Canada's National Executive Board and was approved as the foundation document to be submitted to the Founding Convention. Also, the National Executive Board unanimously approved a resolution to call a special CAW convention, which convention is provided for in article 9, section 16 of its constitution, and to endorse the conduct of a founding convention of a new union to be named "Unifor" immediately following the special convention. Every CAW-Canada local union president received a copy of the call letter and supporting materials, such as the Unifor constitution, the proposed merger agreement and proposed amendments to the CAW-Canada constitution. As well, every CAW-Canada local union recording secretary received a copy of the call letter.

[11] The CEP's National Executive Board also endorsed a resolution approving the proposed merger and draft constitution and called a special convention, as provided for in article 8.03 of the CEP National Constitution. The CEP delivered to each of its local unions a copy of the proposed new union constitution and the merger agreement for the purposes of review and discussion.

[12] The CAW Special Convention was held in August 2013, and a resolution to amend the CAW-Canada constitution was unanimously adopted by the delegates in attendance. As a result, article 8 of section 1 of the constitution now provided that if a majority of the National Executive Board members agreed, the Board could approve a merger with another trade union or bring another trade union into CAW-Canada.

[13] CEP's Special Convention was held in late August of 2013, and a resolution calling for the Special Convention to approve the merger with Unifor was approved, with 79.74% of votes cast in favour of the resolution.

[14] Unifor's Founding Convention took place on August 31 and September 1, 2013, and of a total of 1516 electronic ballots, 1418 were cast in favour of adopting the constitution. Elections of the first National Executive Board of Unifor were held, and a motion was made to approve the merger agreements between CEP and Unifor and CAW-Canada and Unifor. The CAW-Canada and CEP delegates voted separately, and of the 448 ballots cast by CAW-Canada delegates, 444 voted in favour. Of the 669 CEP ballots cast, 638 voted in favour of approving the merger agreement.

[15] The CAW-Canada National Executive Board then unanimously approved a resolution to approve the merger between it and Unifor, and the agreement was signed.

[16] The new Unifor National Executive Board held its first meeting in early September 2013 and voted unanimously to approve the merger agreements and to authorize its national officers to sign them, which signature then occurred. As well, the new National Executive Board decided by resolution to issue a charter to every former CAW-Canada and CEP local union, in conformity with the merger agreements and Unifor's constitution. Accordingly, several hundred charters were issued, thereby creating Unifor Local 2182 as a continuation of and successor to the prior CAW Local 2182.

[17] With respect to the role of CAW Local 2182, in particular with respect to the merger process, the applicant has submitted evidence to the effect that in March of 2012, the report of the Proposal Committee was distributed to the local's members via the regional directors and was posted on the local union's website. In October of 2012, the local's Board of Directors met with CAW national representatives to discuss the merger, and the following day, at the local's Triennial Convention, delegates discussed the merger in further detail and then voted unanimously in support of the decision to merge the two unions. In April of 2013, the "New Union Update" was distributed to all members of the local, which distribution included information about joint regional meetings organized by both the CAW and CEP to provide additional information to members regarding the proposed merger. In early May 2013, further information was disseminated to members, and later that month, the draft new union's national constitution was disseminated to members by the local's executive. In June, there were two further distributions of information to members of the local, and throughout the months of July and August, the local continued to distribute to its membership information regarding the merger and the founding convention.

[18] The present application states that by virtue of a merger agreement between Unifor and CAW-Canada and by virtue of the constitutions of both organizations, Unifor is therefore the successor of CAW-Canada and that Unifor Local 2182 is the successor of CAW Local 2182. The application carefully set out over twenty pages of facts in support of its contention that the constitutional rules of each of the predecessor organizations were adhered to in creating Unifor and its contention that Unifor has the status of a trade union in law and is an employee organization for the

purposes of the Act. Appended to the application were several documents in support of the application, including the Unifor constitution, merger agreement and the charter for Unifor Local 2182.

[19] Following receipt of the present application, the Board acknowledged receipt of the application by letter addressed to both the Unifor National Office and the Treasury Board of Canada, the respondent to this application. On October 24, 2013, the respondent replied to the Board's letter, advising that it had "... no objection to the above mentioned request from Unifor (Local 2182)." The parties were then advised that the matter would be referred to the Board.

[20] Sections 43 and 79 of the Act read as follows:

Review of orders and decisions

43. (1) *Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.*

Exception

(2) *A right that is acquired by virtue of an order or a decision that is reviewed, rescinded or amended by the Board may not be altered or extinguished with effect from a day that is earlier than the day on which the review, rescission or amendment is made.*

...

Mergers, amalgamations and transfers of jurisdiction

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

Board to determine questions

(2) *If any question arises in respect of a merger, amalgamation or transfer of jurisdiction referred to in subsection (1) concerning the rights, privileges and duties of*

an employee organization under this Part or under a collective agreement, an arbitral award or an essential services agreement in respect of a bargaining unit or an employee in a bargaining unit, the Board, on application by the employer or any person or employee organization concerned, must determine what rights, privileges and duties have been acquired or are retained.

Inquiry and votes

(3) Before making a determination on the application, the Board may make any inquiry or direct that a representation vote be taken among the employees to be affected by the determination. The provisions of subsection 65(2) apply in relation to the taking of the vote.

Reasons

[21] On the basis of the file before me, the Board recognizes that the National Automobile, Aerospace, Transportation and General Workers Union of Canada has merged with the Communications, Energy and Paperworkers Union of Canada to form Unifor and that CAW Local 2182 is now Unifor Local 2182. Moreover, the Board agrees that Unifor Local 2182 is an employee organization within the meaning of section 2 of the Act.

[22] Unifor Local 2182 has shown that the merger was effected in accordance with the constitutions of each of the two former trade unions, and in particular that of CAW Local 2182, and that the merger was approved not only by a strong majority of those to whom such decisions belong, in accordance with the constitutions of both constituent organizations, but also unanimously by the local's delegates at their triennial convention.

[23] The merger agreement between CAW-Canada and Unifor indicates that

any and all collective bargaining rights . . . acquired by certification, recognition, the provisions of a collective agreement or by any other means, together with all of the rights and privileges of the CAW under any applicable statute, collective agreement or law, shall be automatically transferred to Unifor.

[24] As a result of the foregoing, and without limiting the generality thereof, the Board makes the following determination.

[25] Unifor Local 2182 is CAW Local 2182's successor with respect to employees falling within the terms of the bargaining certificate, and Unifor Local 2182 acquires all of CAW Local 2182's rights, privileges and duties under the *Act* or under a collective agreement or arbitral award in respect of the bargaining unit or an employee therein.

[26] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[27] The application is allowed, and Unifor Local 2182, is certified as the bargaining agent for the bargaining unit. The certificate will be amended accordingly.

December 06, 2013.

**David Olsen,
a panel of the Public Service
Labour Relations Board**