

Date: 20140130

File: 536-02-4

Citation: 2014 PSLRB 9



*Public Service
Labour Relations Act*

Before a panel of the Public
Service Labour Relations Board

BETWEEN

UNIFOR

Applicant

and

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

Respondents

Indexed as

*Unifor v. National Automobile, Aerospace, Transportation and General Workers Union
of Canada (CAW-Canada) and 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: Linda Gobeil, a panel of the Public Service Labour Relations Board

For the Applicant: Anthony Dale, counsel

For the Respondent - National Automobile, Aerospace, Transportation and General Workers Union of Canada: Anthony Dale, counsel

For the Respondent - Treasury Board: Natalie Aline Caron, Treasury Board
Secretariat

Decided on the basis of written submissions,
filed December 20, 2013, and January 10, 2014.

REASONS FOR DECISION

Application before the Board

[1] On December 17, 2013, counsel for the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and Unifor 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, counsel for the applicant requested that the Board review and amend its certificate, declare that Unifor is the successor of CAW-Canada by reason of a merger, and declare that Unifor has acquired all of the rights, privileges and duties of CAW-Canada, including all rights, privileges and duties set out in the certificate and in the collective agreement between the Treasury Board and CAW-Canada effective from March 31, 2011, to June 30, 2014.

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

[4] The CAW-Canada is, pursuant to the Act, the certified bargaining agent for the Air Traffic Control Group. This bargaining unit has, for decades, been continuously represented by the CAW-Canada and its predecessors, when a certificate was issued to the Canadian Air Traffic Control Association (CATCA) in PSSRB File No. 143-02-70 (19701214) for the Air Traffic Control Group bargaining unit. Further to legislative changes, a new certificate was issued in 1999, amending the description of the bargaining unit (PSSRB File No. 142-02-335 (19990607)). On December 23, 2004, an amended certificate was issued (2004 PSSRB 182) to reflect the merger of CATCA and the CAW-Canada.

[5] Unifor is a newly established trade union formed by the merger, in the late summer of 2013, of two predecessor trade unions, one of which is the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-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. The first two-day leadership meeting occurred in November 2011, and it was agreed that the informal discussions should serve as the springboard for a discussion paper, which paper was published in December 2011 and was entitled: “A Moment of Truth for Canadian Unions”. This discussion paper generated significant media coverage and debate.

[7] In January 2012, a second, larger union leadership meeting was held by CAW-Canada, and a firm plan to move the initiative forward was determined. These steps led to the National Executive Board of each union unanimously approving a process to continue the discussions in greater depth.

[8] On January 26, 2012, CAW-Canada and CEP issued correspondence to each of their respective local unions, announcing the decision to engage in these discussions. The correspondence included a protocol agreement and timetable documents which would govern the future discussions. A media release was also jointly distributed by CAW-Canada and CEP, which announced the following:

Under the process protocol, a representative committee will work over the coming months to investigate specific issues related to a new union (including dues and finances, representative structures and regional issues). It will issue a report on whether a new union is feasible and desirable in time for the upcoming convention of both unions . . . Both unions pledge a high degree of transparency concerning the work of the process committee, including the establishment of a joint website devoted to the project.

The CAW/CEP Proposal Committee was struck as contemplated by the Protocol Agreement. The members of the Committee consisted of senior leadership from both organizations.

[9] The purposes of the Proposal Committee were to discuss the issues relating to the establishment of a new Canadian union and to make proposals regarding its main principles and structures.

[10] On February 25, 2012, the first meeting of the Proposal Committee assembled in Toronto. The Committee prepared a report of its activities over the last days of February 2012, and this first report was delivered by email and/or mail to all CAW-Canada locals and was released to the media for broader public distribution.

Also, the report was published on a temporary web page accessible through the CAW-Canada and CEP's websites.

[11] In April 2012, approximately 700 democratically elected delegates attended a meeting of the CAW-Canada Council, and a recommendation/resolution was unanimously approved, endorsing the discussions undertaken with CEP with respect to the formation of a new union. On August 1, 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. The report was issued at a live-streamed press conference that same day.

[12] On August 20-24, 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, pursuant to and in conformity with the contents of the Proposal Committee's final report.

[13] 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 calling for the creation of a new union in concert with CAW-Canada.

[14] CAW-Canada Convention delegates were democratically elected by local union members further to a detailed procedure spelled out in the CAW-Canada constitution, which contained provisions for a nomination process, a responsible Local Union Election Committee and a secret ballot vote.

[15] The proposed draft constitution of the new union, proposed merger agreement and supporting policies were considered by the CAW-Canada's National Executive Board and approximately two dozen senior staff members 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 and April 2013,

and with minor changes proposed, it also voted to support the foundation documents as the way forward for the new union.

[16] Based on the feedback received, certain changes and clarifications were made to the draft constitution, and on May 27, 2013, the Proposal Committee came together for a final meeting to review the draft constitution. On May 28, 2013, 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, commencing August 30, 2013, in Toronto.

[17] On June 18, 2013, a call letter for the Special Convention and Founding Convention was issued to all CAW-Canada local unions and subordinate bodies. Article 9, section 16, of the CAW-Canada's constitution permits the CAW-Canada National President to call a special convention. Included in the special convention call was a copy of the proposed constitution of Unifor and a copy of the proposed merger agreement between CAW-Canada and Unifor, as well as a proposed constitutional amendment to article 8, section 1, of the CAW-Canada constitution, to allow a majority of the National Executive Board to approve a merger with another trade union.

[18] Every CAW-Canada local union president was mailed a copy of the call letter and supporting materials, and every CAW-Canada local union recording secretary and financial secretary received a copy of the call letter. The materials were mailed on June 19-20, 2013, well in advance of the special convention.

[19] The CEP's constitution also provided for the assembly of a special convention when such was authorized by members of its National Executive Board and established a procedure by which the CEP could merge with another union. At a meeting held on May 28, 2013, the CEP National Executive Board also endorsed a resolution approving the proposed merger and draft constitution and called a special convention. The CEP delivered to each of its local unions a copy of the call letter specifying the time and location of the special CEP convention and the ensuing founding convention of Unifor. On June 18, 2013, approximately two weeks after sending the call letter, copies of the proposed constitution of Unifor and the proposed merger agreement between CEP and Unifor were delivered to all CEP local unions.

[20] The CAW-Canada Special Convention was held on August 30, 2013, and the resolution to amend the CAW-Canada constitution, described in paragraph 16, 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.

[21] On August 29, 2013, the day prior to the CEP Special Convention, the CEP's National Executive Board met and unanimously adopted a resolution which specifically called for the CEP Special Convention to approve the merger with Unifor. The CEP Special Convention was convened on August 30, 2013, and the 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.

[22] Unifor's Founding Convention took place on August 31 and September 1, 2013. A total of 1600 persons registered as delegates or participants. Of these 1600 delegates, 681 persons were CAW-Canada delegates, all of whom were delegates to the CAW-Canada Special Convention. Further, 919 persons were registered as delegates on behalf of CEP, all of whom had been delegates at the CEP Special Convention.

[23] Of a total of 1516 electronic ballots, 1418 were cast in favour of adopting the proposed constitution for the new union. If assessed on a weighted scale depicting the number of members from CAW-Canada and CEP represented by delegates, the constitution was adopted by a weighted vote of 248,800 members/ballots versus 11,611.

[24] Elections of the first National Executive Board of Unifor were held, and its members were either elected or acclaimed. A motion was then made to approve the merger agreements between CEP and Unifor and CAW-Canada and Unifor. The CAW-Canada and CEP delegates voted separately using the electronic secret ballot and secure voting system, which segregated the CAW-Canada votes from the CEP votes. Of the 448 ballots cast by CAW-Canada delegates, 444 voted in favour of the merger. Of the 669 CEP ballots cast, 638 voted in favour of approving the merger agreement.

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

In doing so, the CAW-Canada acted as it was authorized to do, pursuant to article 8 of the CAW-Canada Constitution.

[26] The merger of CAW-Canada with Unifor and of CEP with Unifor was effected principally, but not exclusively, by paragraphs 1 and 2 of the respective merger agreements. Paragraphs 1 and 2 of the CAW-Canada merger agreement state as follows:

1. *Unifor and CAW-Canada agree to merge pursuant to the terms of this merger agreement . . . upon ratification by both parties thereof . . . Accordingly, it is agreed that Unifor is the successor to the CAW-Canada, and that Unifor shall acquire the rights, privileges and duties of the CAW-Canada as of the Effective Date. All CAW-Canada Local Unions shall upon the merger, become Local Unions of Unifor. . . .*
2. *Unifor shall forthwith . . . issue Unifor Charters to each CAW Local Union, and each of the Unifor Locals so continued . . . shall . . . become the successors to the said CAW Local Unions; and each Unifor Local shall retain and acquire the rights, privileges and duties of the respective CAW Local Union to which it has succeeded. . . .*

[27] Paragraphs 1 and 2 of the CEP and Unifor merger agreement state:

1. *Unifor and CEP agree to merge pursuant to the terms of this merger agreement . . . upon ratification by both parties thereof . . . Accordingly, it is agreed that Unifor is the successor to the CEP, and that Unifor shall acquire the rights, privileges and duties of the CEP as of the Effective Date. All CEP Local Unions shall upon the merger, become Local Unions of Unifor. . . .*
2. *Unifor shall forthwith . . . issue Unifor Charters to each CEP Local Union, and each of the Unifor Locals so continued . . . shall . . . become the successors to the said CEP Local Unions; and each Unifor Local shall retain and acquire the rights, privileges and duties of the respective CEP Local Union to which it has succeeded. . . .*

[28] As regards the collective bargaining rights of the predecessor unions, the operative terms of the CAW-Canada and CEP merger agreements with Unifor were similar. Paragraphs 12 to 14 of the merger agreements provided that any and all collective bargaining rights of the predecessor unions and their local unions that were acquired by certification, together with the rights and privileges of the predecessors

under any applicable statute, collective agreement or law, were to be automatically transferred to Unifor.

[29] The present application states that Unifor is an employee organization within the meaning of subsection 2(1) of the *Act*, and 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. The application carefully set out over nearly 20 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 and the merger agreements.

[30] 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 January 9, 2014, the respondent replied to the Board's letter, advising that it had ". . . no objection to the above mentioned request." The parties were then advised that the matter would be referred to the Board.

[31] 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 or otherwise.

Board to determine questions

(2) If any question arises in respect of a merger, amalgamation or transfer of jurisdiction concerning the rights, privileges and duties of an employee organization under this Part or under a collective agreement or an arbitral award 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

[32] 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 Unifor is now the successor organization and has acquired all the rights, privileges and duties set out in the certificate and the collective agreement effective from March 31, 2011, to June 30, 2014. Moreover, the Board agrees that Unifor is an employee organization within the meaning of section 2 of the *Act*.

[33] Unifor 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-Canada, 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 by the union's delegates who attended the special convention.

[34] The merger agreement between CAW-Canada and Unifor indicates that Unifor is the successor organization to CAW-Canada and as such acquires “the rights, privileges and duties” of the organization to which it has succeeded. As a result of the foregoing, and without limiting the generality thereof, the Board makes the following determination.

[35] Unifor is CAW-Canada’s successor with respect to employees falling within the terms of the bargaining certificate for the Air Traffic Control Group, and Unifor acquires all of CAW-Canada’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.

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

(The Order appears on the next page)

Order

[37] The application is allowed, and Unifor is certified as the bargaining agent for the bargaining unit comprised of “All employees of the Employer in the Air Traffic Control Group as defined in Part I of the Canada Gazette of March 27, 1999”. The certificate will be amended accordingly.

January 30, 2014.

**Linda Gobeil,
a panel of the Public Service
Labour Relations Board**