

Canada Industrial Relations Board



Conseil canadien des relations industrielles

Order No.: 9995-U

IN THE MATTER OF THE

Canada Labour Code

- and -

Air Canada,
Aveos Fleet Performance Inc.,

applicants,

- and -

International Association of Machinists and
Aerospace Workers,

certified bargaining agent.

WHEREAS, by Order No. 9098-U dated May 19, 2006, the Canada Industrial Relations Board ("the Board") certified the International Association of Machinists and Aerospace Workers ("the IAMAW") as the bargaining agent for a unit of employees comprising:

"all employees of Air Canada performing office, clerical and administrative support functions, including discrete units within Air Canada primarily performing such functions, and including customer relations functions when performed incidental to office, clerical and administrative support functions, but excluding employees performing such functions when directly and primarily related to customer sales and service functions or when performed in discrete units within Air Canada primarily performing customer sales and service functions; also excluding any persons performing management functions or employed in a confidential capacity in matters relating to industrial relations as required by the Canada Labour Code and any employees already covered by a certification order."

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AND WHEREAS the business of Air Canada Technical Services (ACTS) Limited Partnership ("ACTS LP") was sold on October 16, 2007 and has carried on business as Aveos Fleet Performance Inc. ("Aveos") since September 23, 2008;

AND WHEREAS Air Canada, Aveos and the IAMAW entered into a Memorandum of Agreement dated January 8, 2009 ("the January 8, 2009 MOA"), to facilitate the orderly transition of certain Air Canada employees to Aveos in accordance with the expressed preference of those employees and to establish the terms and conditions of employment that will apply to those Air Canada employees who elect to become employees of Aveos;

AND WHEREAS, in fulfillment of the condition in the January 8, 2009 MOA which requires Aveos to remain the exclusive provider of heavy maintenance to Air Canada until June 30, 2013, Air Canada and Aveos have executed an agreement which so provides;

AND WHEREAS the Board issued an order dated January 22, 2009, in which it found that the January 8, 2009 MOA complied with the requirements of the *Canada Labour Code (Part I-Industrial Relations)* ("the Code") and directed the parties to cooperate in implementing the terms of the January 8, 2009 MOA;

AND WHEREAS Arbitrator Martin Teplitsky issued an award on March 5, 2009, settling all outstanding issues resulting from the January 8, 2009 MOA;

AND WHEREAS Air Canada and the IAMAW entered into a Memorandum of Agreement on June 8, 2009 ("the June 8, 2009 MOA") in which they agreed to extend all of the terms and conditions of the collective agreement applicable to the technical, maintenance and operational support bargaining unit for a period of twenty-one (21) months from their then current expiry date (July 1, 2009 to March 31, 2011);

AND WHEREAS Arbitrator Teplitsky issued a subsequent award on June 16, 2010, in which he allowed Aveos and Air Canada to proceed with the sale of business application to the Board, as contemplated in the January 8, 2009 MOA;

AND WHEREAS, on June 25, 2010, Air Canada and Aveos Fleet Performance Inc. filed a joint application with the Board pursuant to sections 18.1, 44, 45 and 46 of the *Code* (Board file 28234-C), as contemplated in the January 8, 2009 MOA and updated pursuant to the June 8, 2009 MOA, seeking a declaration of sale of business and orders from the Board to implement the agreement of the parties for the transition of employees from Air Canada to Aveos;

AND WHEREAS, on October 1, 2010, the IAMAW filed an application pursuant to section 35 of the *Code* (Board file 28402-C) for a declaration that Air Canada and Aveos constitute a single employer;

AND WHEREAS, for reasons given in *Aveos Fleet Performance Inc. and Air Canada*, 2010 CIRB LD 2438, the Board ordered that the sale of business application (Board file 28234-C) and the single employer application (Board file 28402-C) be consolidated;

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AND WHEREAS the Board issued a Confidentiality Order on October 4, 2010, to protect and maintain the confidentiality of numerous commercially sensitive documents and information, and the parties' evidence and submissions related to the two applications before the Board were protected accordingly;

AND WHEREAS, after hearing the parties and considering their oral and written submissions, the Board is satisfied that the evidence demonstrates that a sale of business within the meaning of section 44 of the *Code* has taken place;

NOW, THEREFORE, it is hereby declared by the Canada Industrial Relations Board that:

(1) the sale of assets and liabilities pursuant to the Asset Purchase Agreement dated June 22, 2007, between ACTS LP and Aveos Fleet Performance Inc., as it is now designated, constitutes a sale of business within the meaning of section 44 of the *Code*;

(2) Aveos Fleet Performance Inc. is the successor employer to Air Canada Technical Services (ACTS) Limited Partnership; and

(3) Aveos Fleet Performance Inc. and Air Canada constitute distinct employers and the IAMAW's application for a declaration of single employer pursuant to section 35 of the *Code* is hereby dismissed.

AND IT IS HEREBY ORDERED by the Canada Industrial Relations Board that the International Association of Machinists and Aerospace Workers be, and it is hereby certified to be, the bargaining agent for a unit comprising:

"all employees of Aveos Fleet Performance Inc. performing office, clerical and administrative support functions, including discrete units within Aveos Fleet Performance Inc. primarily performing such functions, and including customer relations functions when performed incidental to office, clerical and administrative support functions, but excluding employees performing such functions when directly and primarily related to customer sales and service functions or when performed in discrete units within Aveos Fleet Performance Inc. primarily performing customer sales and service functions; any persons performing management functions or employed in a confidential capacity in matters relating to industrial relations as required by the Canada Labour Code; and any employees already covered by a certification order."

AND FURTHERMORE, it is ordered by the Canada Industrial Relations Board, pursuant to section 18.1(3) of the *Code*, that:

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(1) the collective agreement between Air Canada and the IAMAW for the office, clerical and administrative support bargaining unit, as extended and amended by the June 8, 2009 MOA and ending April 1, 2011, constitutes a distinct but identical collective agreement applicable to Aveos Fleet Performance Inc. in respect of the MRO business acquired from ACTS LP; and

(2) any amendments to the collective agreement between Air Canada and the IAMAW made subsequent to the date of this Order do not apply to the collective agreement between Aveos and the IAMAW created as a result of the application of paragraph (1);

(3) due to the impossibility to respect the time lines set out in section 7 of Appendix C of the June 8, 2009 MOA, the "CIRB Date", "Selection Closure Date" and "Transition Date" shall retain their original meanings as set out in the January 8, 2009 MOA;

(4) the parties are to fully comply with the terms of the January 8, 2009 MOA, as amended by the June 8, 2009 MOA.

AND FURTHERMORE, the Canada Industrial Relations Board hereby declares that the January 8, 2009 MOA, as amended by the parties June 8, 2009 MOA, and the present Order properly and fully dispose of all matters arising from the sale of business from ACTS LP to Aveos Fleet Performance Inc. or related to the consequences of such sale, whether under the *Code*, the applicable collective agreement or otherwise.

ISSUED at Ottawa, this 31st day of January, 2011, by the Canada Industrial Relations Board.


Elizabeth MacPherson
Chairperson

Reference: File No. 28234-C

