Canada Industrial Relations Board Conseil canadien des relations industrielles

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BY WEB PORTAL

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Dear Sirs:

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and an application filed pursuant to section 87.4(4) thereof involving a question respecting the application of section 87.4(1) by A.S.P. Incorporated, applicant; Unifor, respondent. (037180-C)

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and an application filed pursuant to section 19.1 thereof by Unifor, applicant; A.S.P. Incorporated, respondent. (037180-C)

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code* (the *Code*), considered the above-noted applications.

Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this matter without an oral hearing.

I. Nature of the Applications

On November 17, 2023, A.S.P. Incorporated (ASP or the employer) filed an application with the Board, pursuant to section 87.4(4) of Part I (Industrial Relations) of the *Code*, asking it to determine the activities or services that must be maintained in the event of a strike or lockout in accordance with section 87.4(1) of the *Code*.

The employees in question are represented by Unifor (the union) pursuant to Board order no. 10636-U. This unit covers employees working at the Lester B. Pearson International Airport and the Toronto City Centre Airport. The collective agreement between the employer and Unifor, Local 2002, for the employees working at the Lester B. Pearson International Airport expired on December 31, 2022, although it continues to apply.

On November 24, 2023, the union filed a preliminary objection to the employer's application and requested an interim order under section 19.1 of the *Code* dismissing the employer's application because the Board does not have jurisdiction to consider it. This request was supported by an affidavit as required by the *Canada Industrial Relations Board Regulations, 2012*.

Unifor raised two issues. First, it submits that the employer did not, within 15 days of the union's notice to bargain in October 2022, raise an issue about the maintenance of activities pursuant to section 87.4(2) of the *Code*.

Second, the union argues that the employer did not, within 15 days of the union's filing of a notice of dispute on September 7, 2023, file an application under section 87.4(4) of the *Code*.

The Board has decided to issue a short decision on the union's preliminary objection in light of its recent jurisprudence concerning the time limit prescribed by section 87.4(2) of the *Code.*

II. Background and Facts

After attempting to negotiate an agreement on the maintenance of certain essential services and activities in the event of a strike or lockout, the union advised ASP that it would not engage in any further discussions to obtain such an agreement.

On October 24, 2022, Unifor sent the employer a letter giving notice to bargain for the unit it represents. On September 7, 2023, it sent the Minister of Labour (the Minister) a notice of dispute

pursuant to section 71 of the *Code*, requesting that the Minister appoint a conciliation offer for the renewal of the collective agreement.

On November 17, 2023, several months after the notice to bargain collectively was given, the employer filed its application under section 87.4 of the *Code* with respect to the services to be maintained to protect the safety and health of the public in the event of a strike or lockout.

The employer asks the Board to dismiss the union's preliminary objection under section 19.1 of the *Code* and determine its application regarding the maintenance of activities while having regard to the normal process and not section 19.1 of the *Code*.

For the following reasons, the Board finds that it does not have jurisdiction to determine the employer's application.

III. Analysis and Decision

The relevant provisions of the *Code* read as follows:

> **87.4 (1)** During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.
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> **(2)** An employer or a trade union may, no later than fifteen days after notice to bargain collectively has been given, give notice to the other party specifying the supply of services, operation of facilities or production of goods that, in its opinion, must be continued in the event of a strike or a lockout in order to comply with subsection (1) and the approximate number of employees in the bargaining unit that, in its opinion, would be required for that purpose.
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> **(3)** Where, after the notice referred to in subsection (2) has been given, the trade union and the employer enter into an agreement with respect to compliance with subsection (1), either party may file a copy of the agreement with the Board. When the agreement is filed, it has the same effect as an order of the Board.
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> **(4)** Where, after the notice referred to in subsection (2) has been given, the trade union and the employer do not enter into an agreement, the Board shall, on application made by either party no later than fifteen days after notice of dispute has been given, determine any question with respect to the application of subsection (1).
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> **(5)** At any time after notice of dispute has been given, the Minister may refer to the Board any question with respect to the application of subsection (1) or any question with respect to whether an agreement entered into by the parties is sufficient to ensure that subsection (1) is complied with.

Essentially, the Board may only consider such an application once two conditions imposed by section 87.4(4) have been met. First, the union or the employer must give notice under section 87.4(2) no more than 15 days after the notice to bargain collectively has been given. Second, the union or the employer must file an application with the Board no later than 15 days after the notice of dispute has been sent to the Minister.

In *Winnipeg Airports Authority Inc.*, 2019 CIRB 914, the Board stated that it did not have jurisdiction to deal with the application filed by the union pursuant to section 87.4(4) of the *Code* given that the notice under section 87.4(2) was not timely. It stated the following:

> [27] In order for the Board to be properly seized of an application pursuant to section 87.4(4), a notice referred to in section 87.4(2) must have been given no later than 15 days after notice to bargain collectively was provided. Section 87.4(2) clearly sets out what must be contained in such a notice:
>
> 1. the supply of services, operation of facilities or production of goods that the party providing notice believes must be continued; and
> 2. the approximate number of employees in the bargaining unit that would be required for that purpose.

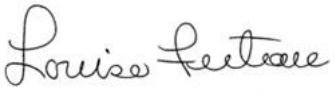
In *Marine Atlantic Inc*., 2008 CIRB 431, the Board stated that serving a notice within the time limit set out in section 87.4(2) of the *Code* is a mandatory precondition to the application of section 87.4(4) and to the Board being seized of an application.

More recently, in *Halifax International Airport Authority*, 2023 CIRB 1096, the Board dismissed the application filed by the employer pursuant to section 87.4(4) of the *Code* for the same reasons stated in *Winnipeg Airports Authority Inc.*, *supra*, and concluded that the application was not properly before it and should be dismissed.

IV. Conclusion

In light of its established case law, the Board dismisses the application as it lacks the jurisdiction to deal with it.

For the Board,



Louise Fecteau
Vice-Chairperson

c.c.: Mr. Kieran Clarke