The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. CANADIAN CORPS OF COMMISSIONAIRES (NORTH SASKATCHEWAN) INC., Respondent

LRB File No. 114-11; February 15, 2012
Vice-Chairperson, Steven Schiefner; Members: Ms. Brenda Cuthbert and Mr. Duane Siemens

For the Applicant Union: Mr. Drew Plaxton
For the Respondent Employer: Ms. Shannon G. Whyley

Constitutional Law – Jurisdiction of Board – Employer is contractor providing security services at Saskatoon International Airport – Union seeks successorship declaration with respect to employees working at airport – Employer argues that employees working at airport fall under Federal jurisdiction – Board concludes that airport is a Federal undertaking or work and that provision of security services is vital, essential or integral to operation of airport sufficient to displace the presumption of Provincial jurisdiction over labour relations – Board concludes it is without jurisdiction to grant remedy sought by Union.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: On July 11, 2011, the United Food and Commercial Workers, Local 1400 (the "Union") applied to the Saskatchewan Labour Relations Board (the "Board") pursuant to s. 37.1 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") seeking an Order of declaration to the effect that there had been a deemed sale or disposition of a business (or part thereof) from Avion Services Corp. ("Avion") to the Canadian Corps of Commissionaires (Northern Saskatchewan) Inc. (the "Employer") with respect to the provision of security services at the Saskatoon John G. Diefenbaker International Airport (the "Saskatoon Airport" or the "Airport"). Concomitant therewith, the Union also sought an Order of successorship pursuant to s. 37 of the *Act* to the effect that the Employer is bound by the Union's previous certification Order(s), together with the collective agreement in force for employees providing security services at the Airport.

[2] The Employer denied that it was a successor (deemed or otherwise) to the certification Order of this Board involving Avion and the provision of security services to the Airport. Firstly, the Employer argued that the Airport was a federal undertaking or business

within the meaning of the *Canada Labour Code*, R.S.C., 1985, c. L-2, and that the security services provided by the Employer at that facility were an integral part of the operation of the Airport. As such, the Employer took the position that, with respect to the provision of security services at the Airport, it is a federally-regulated employer subject to the provisions of the *Canada Labour Code* and not the *Act*. Simply put, the Employer argued that this Board is without jurisdiction to grant the remedy sought by the Union (or any remedy with respect to security services at the Saskatoon Airport). In the alternative, the Employer argued that s. 37.1 of the *Act* did not apply to the Airport as it was not a named or analogous institution (i.e.: a "public institution") within the meaning of that section.

[3] Because these proceedings involved a constitutional question, notices were served on the Attorney Generals of Canada and Saskatchewan pursuant to *The Constitutional Questions Act*, R.S.S. 1978 c.C-29. Neither the Federal nor Provincial Governments elected to participate in these proceedings. As such, they have not been included in the style of cause.

[4] The hearing into the merits of the Union's application took place in Saskatoon, Saskatchewan and occurred over three (3) days, concluding on January 4, 2012.

[5] The Union called Ms. Brandi Tracksell, a Service Representative with the Union, and Ms. Nicole Werner, a former employee of Avion, who worked at the Airport as a supervisor of security services. The Employer called Mr. Michael James Cooper, the Employer's Chief Executive Officer, and Mr. James (Al) Stickney, a contract manager with the Employer.

Facts:

[6] Saskatoon John G. Diefenbaker Airport is an international airport operated in accordance with and subject to the provisions of the *Aeronautics Act*, R.S.C. 1985, c.A-2. The Airport is situated on land owned by the Federal Government and is registered as a Class 2 "aerodrome" pursuant to the *Canadian Aviation Security Regulations*, SOR/2000-111 (hereinafter the "*Aviation Security Regulations"*). As a registered aerodrome, the Airport must be operated in accordance with both the *Aviation Act* and the *Aviation Security Regulations* to maintain its registration status. In addition, as the Saskatoon Airport is an international airport granting landing rights to international flights, the Airport Authority must also comply with the security and other requirements of foreign jurisdictions.

[7] The Saskatoon Airport Authority is a non-profit corporation registered in the Province of Saskatchewan and is the aerodrome operator of the Saskatoon Airport. Prior to 1999, the Airport was operated by Transport Canada. However, in 1999, the Saskatoon Airport Authority took over these operations. As such, the Saskatoon Airport Authority is now responsible for compliance with all requirements imposed on an aerodrome operator pursuant to the *Aviation Security Regulations*, including those with respect to security.

[8] Security at the Airport has two (2) components; firstly, "pre-boarding screening" which is the responsibility of the Canadian Air Transport Security Authority ("CATSA") and which is not the subject matter of these proceedings; and secondly, "terminal security", which is the subject matter of these proceedings. Both pre-boarding screening, which involves the screening of passengers and goods for prohibited items, and terminal security are matters specified and regulated pursuant to the *Aviation Security Regulations*. As the aerodrome operator, the Saskatoon Airport Authority is responsible for maintaining the prescribed standards at the Saskatoon Airport, including those prescribed pursuant to the *Aviation Security Regulations*, as well as those that may be imposed by Transport Canada as the Federal regulator of aerodromes and air transportation in Canada. As indicated, in addition to the security standards that may be prescribed by Federal regulation or imposed by Transport Canada, security requirements can also be imposed by foreign governments. For example, following the tragic events commonly know as "9/11", the United States of America imposed an additional security requirement related to the posting of security guards at gateways during boarding of aircraft destined for that country.

[9] Terminal security at the Saskatoon Airport includes the monitoring of the entire air terminal facility on a twenty-four (24) hour basis. This includes monitoring all security gates, a perimeter fence, and various restricted and sterile areas, together with the Airport's concomitant gates, aprons and runways. This monitoring also includes various locations at the Airport where the public would have a general right of access, including streets, roads, sidewalks, parking lots, and the public areas within the terminal. The function of these security services is to prevent unauthorized or unlawful entry into restricted areas at the Airport, to monitor the terminal facility for a variety of threats, and to take necessary or initial action in the event a threat is discovered. The goal of these security services is to ensure the general safety of the aerodrome, aircraft and ancillary equipment, flight crews, the Airport's personnel, and the traveling public.

[10] As indicated, pre-boarding screening of passengers is provided by CATSA employees and is not the subject matter of these proceedings. While CATSA employees work in conjunction with terminal security, these two (2) groups of employees are separate, with each group of employees being responsible for the provision of distinct security services at the Airport.

[11] With respect to terminal security, the Saskatoon Airport Authority has elected to contract for these services. Periodically, the Airport Authority issues a request for proposals seeking a service provider to provide terminal security and other ancillary services at the Airport for a specified term. In its requests for proposals, the Saskatoon Airport Authority bundled the provision of terminal security together with the operation of the Airport's parking facilities and information kiosk. The successful contractor is responsible for the provision of the full bundle of services, including terminal security. Various contractors have provided these services at the Saskatoon Airport. Of significance to these proceedings, this bundle of services has been provided by United Protection Services, Avion, and most recently the Employer. The Employer began providing security services on September 1, 2011. Prior to that, these services had been provided by Avion, who took over the contract from United Protection Services on or about September 1, 2006.

[12] During the term of United Protection Services' contract with the Saskatoon Airport Authority, a unit of its employees, including the employees providing security services at the Airport, was certified by this Board pursuant to an Order dated October 21, 2005[1]. The Board's records indicate that the Union's application for certification was uncontested and the Board's certification Order was granted by an *in camera* panel of the Board. When Avion took over the contract for security services at the Saskatoon Airport, the Union applied to this Board for a declaration to the effect that there had been a deemed sale or disposition of a business (or part thereof) from United Protection Services to Avion with respect to the provision of security services at the Saskatoon Airport. While Avion originally resisted the Union's application for successorship, the Board's records indicate that on or about October 5, 2009, Avion agreed that a deemed successorship had occurred and voluntarily recognized the Union. On November 18, 2009, the Board issued a successorship declaration[2]. As before, as the Union's successorship application was uncontested at this point, the Board's Order was issued by an *in camera* panel of the Board.

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1 See: LRB File No. 160-05

2 See: LRB File No. 029-07.

[13] These proceedings where commenced by the Union on July 1, 2011 prior to the expiration of Avion's contract but at a point in time when the Union was aware that a new contract for the provision of security services at the Saskatoon Airport had been awarded to the Employer, with the transition from Avion to take place on September 1, 2011.

[14] The Employer is a local division of a national organization, being the Canadian Corps of Commissionaires. This organization provides employment opportunities to veterans of Canada's military and police forces. Mr. Cooper, the Employer's Chief Executive Officer, testified that the social purpose served by the Corps of Commissionaires has been recognized by the Government of Canada, which provides the Corps of Commissionaires with a right of first refusal for a certain portion of all security contracts let by the Federal government. Mr. Cooper testified that approximately eighty percent (80%) of the work performed by the Corps of Commissionaires involves the provision of security or guard services of one kind or another and a significant portion of this works arises as a result of the right of first refusal granted by the Federal Government. Mr. Cooper testified that, when the Saskatoon Airport was operated by Transport Canada, the Employer provided security services to this facility and did so pursuant to its right of first refusal. However, when operation of the Saskatoon Airport was transferred to the Saskatoon Airport Authority, the right of first refusal no longer applied and, while the Employer bid on the contract, it was awarded to another service provider.

[15] While the provision of security services is one of the main services provided by the Canadian Corps of Commissionaires, the Employer is also involved in bylaw enforcement (i.e.: typically offences related to parking), Criminal record checks, training of security personnel, mobile patrol and alarm monitoring, and the provision of risk assessments and security solutions to broad range of customers. Mr. Stickney testified that the Employer had a number of security contracts in the City of Saskatoon and elsewhere in the province, including federally-operated facilities (to which the right of first refusal applied) and various other locations, in which case, it would be competing with other service providers. The Employer became aware that the contract for security services at the Saskatoon Airport was coming up for renewal in February of 2011 and was very interested in obtaining this contract. Mr. Stickney testified that the Employer was aware that Avion held the contract in 2001 when it decided to submit a bid to the Saskatoon Airport Authority. The Employer was also aware that Avion was certified to the Union.

[16] Ultimately, the Employer was selected by the Saskatoon Airport Authority and the parties thereafter negotiated and entered into a contract governing the provision of security services by the Employer at the Airport.

[17] The terms of the security services contract imposed certain requirements on all employees who are assigned by the Employer to work at the Airport. For example, all employees were required to attend training sessions designed and hosted by the Airport Authority dealing with the general operation of the Airport, together with matters ranging from threat recognition and emergency response protocols to customer service. In addition, all employees of the Employer who provide security services at the Airport are required to obtain a "Restricted Area Identity Card" (RAIC). A RAIC is a document issued by Transport Canada that permits the holder to have access to restricted areas at an aerodrome without pre-board screening. Pursuant to the *Aviation Security Regulations*, all employees working in restricted areas must carry RAIC identification at all times. For example, all CATSA employees would have a RAIC, as do the employees of the venders operating concessions within restricted areas. Similarly, fight crews utilize such documents to permit access through specific restricted area access points. At these access points, the holder of a RAIC or other similar documents presents him/herself and is subjected to biometric scanning or some other form of security verification. Terminal security monitors the Airport's restricted access points and grants access to those individuals presenting themselves who satisfy the specified requirements.

[18] Since September 1, 2011, the provision of security services at the Airport has been the responsibilities of the Employer. Mr. Stickney testified that the Employer had approximately twenty-seven (27) employees working at the Saskatoon Airport, some of whom had previously been employees of Avion (but the majority were not previous employees of Avion). For the employees working at the Airport, this facility was their primary place of employment. Mr. Stickney testified that the Employer's employees did not tend to move from the Airport to other work sites or from other work sites to the Airport. Firstly, Mr. Stickney indicated that, in the ordinary course, the Employer's employees did not tend to move from one workplace to another very often. Secondly, the Saskatoon Airport had specific identification and clearance requirements that tended to make movement of employees to this particular site more difficult.

[19] Mr. Stickney testified that most (but not all) of the Employer's employees obtained RAIC identification. Any employees who declined to do so or was unable to obtain a RAIC, was

limited to working in the parking lot kiosk to monitor the parking lot and to collect parking fees. Finally, Mr. Stickney indicated that the employees assigned to work at the Saskatoon Airport include a supervisor, who was responsible for managing and directing the day-to-day affairs of the employees on duty.

[20] The Employer admitted that it had not recognized the Union as the representative of its employees at the Airport and that it was neither deducting Union dues nor otherwise complying with the terms of the collective agreement that the Union had negotiated with Avion.

Argument of the Parties:

[21] The Union argued that the issue of whether or not the provision of security services to the Saskatoon Airport falls within Provincial jurisdiction has already been determined by this Board in LRB File No. 160-05, when the Board certified the employees of United Protection Services working at the Airport. The Union further argued that the Board confirmed this decision when it granted the Union's successorship application in LRB File No. 029-05, at which time, the Board also determined that s. 37.1 of the *Act* applied to the provision of security services at the Saskatoon Airport. The Union argued that its certification Order has not been rescinded or amended and, as such, this Board has no jurisdiction to inquire into the validity of that Order. In this regard, the Union relied upon the decision of this Board in *Carpenters Provincial Council of Saskatchewan v. WM. Clark Interiors Ltd., et. al.*, [1984] Nov. Sask. Labour Rep. 43, LRB File No. 236-84. The Union relied on the decision of the Supreme Court of Nova Scotia in the case of *Rodney Durnford, et. al. v. 221336 Nova Scotia Limited*, 2003 NSSC 175 (CanLII), as standing for the proposition that the Employer's attempt to argue that the provision of security services at the Airport falls within the jurisdiction of the *Canada Labour Code* amounts to a collateral attack of this Board's previous Orders (i.e.: in both LRB File Nos. 160-05 & 029-07) and, as such, is impermissible. Simply put, the Union argued that this Board's previous decisions that the provision of security services at the Saskatoon Airport falls within Provincial jurisdiction and that s. 37.1 of the *Act* is applicable to the provision of those services are now *res judicata* and, pursuant to that common law doctrine, this Board ought not now sit in appeal of these decisions. For this proposition, the Union relied upon this Board's decision in *Barbara Metz v. Saskatchewan Government and General Employees' Union*, [2007] 133 C.L.R.B.R. (2d) 115, [2007] Sask. L.R.B.R. 9, 2007 CanLII 68747, LRB File Nos. 126-06 & 127-06.

[22] In the alternative, the Union argued that the Board was correct in previously holding that the provision of security services at the Airport falls within Provincial jurisdiction and is subject to the provisions of the *Act*. Firstly, the Union argued that primary constitutional competence over labour relations falls within (or is presumed to fall within) the exclusive jurisdiction of provincial legislatures pursuant to "Property and Civil Rights in the Province" pursuant to s. 92(13) of the *Constitution Act, 1867*, (UK), 30 & 31 Victoria, c 3. As a consequence, the Union argued that the functions performed by the subject employees must be clearly essential or integral to a Federal work or undertaking to justify the displacement of Provincial jurisdiction over labour relations. In performing the required analysis to make this determination, the Union argued that the decision of Canada Labour Relations Board in *Public Service Alliance of Canada v. the City of Saskatoon & International Association of Fire Fighters, Local 80*, [1997] 39 C.L.R.B.R. (2nd) 161, requires this Board to examine the whole of the Employer's operations to determine whether or not the functions performed by all of its employees were essential to Federal work or undertaking because, in the Union's opinion, the subject employees do not form a distinct or severable subsidiary. The Union noted that the employees providing security services at the Airport perform the same kind of work performed by the Employer's other employees. To which end, the Union argued that no clear boundary existed for identifying a severable subsidiary comprising this particular group of employees.

[23] Secondly, the Union argued that, while the regulation of "aeronautics" may fall within Federal jurisdiction, the security services that are the subject matter of these proceedings do not satisfy the test established by the Supreme Court of Canada in *Northern Telecom Ltd. v. Communication Workers of Canada*, [1980] 1 S.C.R. 115, 98 D.L.R. (3rd) 1, for determining whether or not a particular operation or activity falls within Federal jurisdiction. The Union took the position that the security services provided by the Employer at the Airport, while clearly important, do not form a sufficiently vital part of the operation of the Airport. In support of this position, the Union relied upon the decisions of the Ontario Labour Relations Board in *Labourers' International Union of North America, Local 837 v. Canadian Corps of Commissionaires (Hamilton)*, [1994] O.L.R.D. No. 2920, File No. 1123-94-R, and *Public Service Alliance of Canada v. Commissionaires (Great Lakes) and Core II Security Inc.*, [2002] O.L.R.D. No. 2727, File No. 0034-02-R. The Union noted that the Employer's contract with the Saskatoon Airport Authority, as did its successor's contract, included a number of aspects that clearly do not form an integral or vital part of the operation of the Airport from an "aviation" perspective, including the operation of the Airport's parking lot and information kiosk. To which end, the Union argued that

an insufficient proportion of the Employer's employees were directly involved in the provision of the kind of security services that would be sufficiently vital or essential to the operation of the Airport to justify Federal jurisdiction.

[24] With respect to the application of s. 37.1 of the *Act*, the Union argued that the Saskatoon Airport fell within the definition of "public institution". The Union noted that this facility was open to the public; was operated for the benefit of the public; and it received significant subsidies from the Federal government because of the service provided by the Airport to the general public. The Union argued that the purpose for which s. 37.1 of the *Act* was enacted was to protect organized workers working in areas where public employers tended to contract out certain services (cafeteria or food services, janitorial or cleaning services, and security services) and where these contracts tend to routinely pass from one operator to another. The Union argued that the organized employees who provide security services at the Saskatoon Airport are the very kind of employees that s. 37.1 of the *Act* was intended to protect.

[25] The Union asked this Board to accept that the provision of security services at the Airport falls within Provincial jurisdiction; to declare that a deemed sale or disposition of a business (or part thereof) had occurred between Avion and the Employer with respect to the provision of security services at the Airport; and to make a declaration of successorship pursuant to s. 37 of the *Act*.

[26] The Employer argued just the opposite. As previously indicated, the Employer took the position that, with respect to the provision of security services at the Saskatoon Airport, it is a Federally-regulated employer subject to the provisions of the *Canada Labour Code*; not the *Act*. As such, the Employer argued that this Board is without jurisdiction to grant any of the remedies sought by the Union.

[27] With respect to the Orders previously issued by this Board, the Employer argued that the doctrine of *res judicata* was inapplicable to these proceedings because the Employer was not a party to any of the proceedings that resulted in these Orders as the subject proceedings involved unrelated employers. Furthermore, the Employer noted that the issue of jurisdiction was not argued nor specifically determined by the Board in issuing any of the Orders arising out the previous proceedings as they were uncontested by the time they came before the Board. As such, the Employer argued that requirements for the *estoppel* or *res judicata* as set

forth by this Board in *Timothy Lalonde v. United Brotherhood of Carpenters and Joiners of America, Local 1985, et. al.*, [2007] 138 C.L.R.B.R. (2nd) 63, 2007 CanLII 68771, LRB File Nos. 098-05 to 100-05, had not been satisfied. In addition (or in the alternative), the Employer argued that, as it was a respondent in these proceedings, it would be a breach of the principles of natural justice to prevent it from raising any issue in defense that it felt was relevant to the matters in issue between the parties, including a challenge to this Board's jurisdictional authority. Finally, the Employer noted that parties are free to raise, and this Board is free to consider, matters going to the jurisdiction of the Board at any time in any proceedings as such is necessary to ensure that we do not issue an *ultra vires* Order. See: *The Canadian Association of Fire Bomber Pilots, et. al. v. Saskatchewan Government Employees' Union, et. al.*, [1993] 1st Qtr. Sask. Labour Rep. 202, LRB File No. 164-92. See also: *Canadian Union of Public Employees, Local 1561 v. Athabasca Health Authority Inc. et. al.*, [2007] 144 C.L.R.B.R. (2d) 81, 2007 CanLII 68933, LRB File No. 063-03.

[28] The Employer argued that the Saskatoon Airport was an "aerodrome" as defined by the Federal legislation and thus was a "*federal work, undertaking or business"* as contemplated by s. 2 of the *Canada Labour Code*. The Employer noted that CATSA employees performing pre-boarding screening at airports have been found to be subject to Federal jurisdiction[3]. The Employer argued that, while the security services provided by its employees were not the same as that performed by CATSA employees, both types of security are crucial to the overall security regime of the Airport to ensure the safety of passengers, air crews and members of the public.

[29] Simply put, the Employer argued that the functions performed by its employees at the Saskatoon Airport were inextricably linked to the Federal regulation of aviation in general and of the Airport specifically. In support of its position, the Employer cited numerous examples where the provision of security services was found to be vital, essential or integral to a federal undertaking in similar or analogous circumstances. For example, the Employer argued that the circumstances of the present application are very similar to the circumstances before the New Brunswick Labour and Employment Board in *Public Service Alliance of Canada v. Canadian Corps of Commissionaires, NB/PEI Division Inc.*, (2006) 125 C.L.R.B.R. (2nd) 3007, 2006 CanLII 63608 (NBLEB). In that case, the New Brunswick Labour Board concluded that the similar

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[3] See: *Aeroguard Co. v. British Columbia (Attorney General)*, [1998] 10 W.W.R. 155, 50 B.C.L.R. 3rd) 1115, 1998 CanLII 2300 (BC SC).

security duties under a similar security contract at the Moncton City Airport were "*vital and integral*" to the operation of that airport. The Employer also propounded the decision of the Canada Industrial Relations Board in *Teamsters, Local 847 v. A.S.P. Incorporated*, (2006) 140 C.L.R.B.R. (2nd) 126, 2006 CanLII 62929 (CIRB) where that Board found that a range of similar security services provided at the Lester B. Pearson International Airport in Toronto, Ontario were subject to Federal jurisdiction due to the fact that they were a "*vital, essential and integral*" part of the operations of the aerodrome operator, in that case the Greater Toronto Airport Authority.

[30] With respect to the application of s. 37.1 of the *Act*, the Employer took the position that no deemed successorship can be found to have occurred with respect to the work performed at the Saskatoon Airport because that facility is not a named or analogous institution (i.e.: a "public institution") within the meaning of that section. In taking this position, the Employer relied upon this Board's decision in *Service Employees International Union, Local 333 v. Smiley's Buffet and Catering, et. al.*, [2008] Sask. L.R.B.R. 888, 2008 CanLII 75623 (SK LRB), LRB File Nos. 007-08 & 008-08. The Employer argued that the Saskatoon Airport Authority is an independent, federally incorporated non-profit corporation. The Employer argued that, although the operation of the Airport was highly regulated, its operations were largely independent from both the Federal and Provincial governments. Simply put, the Employer argued that Saskatoon Airport is not analogous to either a hospital or a university and thus not the kind of facility intended to be subject to the application of s. 37.1 of the *Act*.

[31] The Employer asked that the Union's application be dismissed. Counsel on behalf of the Employer filed a detailed, written brief of law, which we have read and for which we are thankful.

Analysis:

[32] In these proceedings, this Board is called upon to answer two (2) difficult questions:

1. Whether the labour relations between the Employer and the employees providing security services at the Saskatoon Airport are a matter falling within Provincial or Federal jurisdiction?

2. If the answer to the first question is “yes”, whether or not the Saskatoon Airport is a “public institution” within the meaning of s.37.1 of the *Act*?

[33] The Union argued that the Employer is prohibited from raising, and this Board is prevented from considering, these issues on the basis of *res judicata*. In our opinion, the Employer is not prevented from raising either of these issues in these proceedings because of the Orders previously issued by this Board. Firstly, the Employer was not a party to any of these proceedings and there were no determinations on the merits with respect to the issues in dispute; thus neither the requirements for *res judicata* nor *issue estoppel* set forth by this Board in *Re: Lalonde, supra*, have been satisfied. Secondly, we agree with the argument of the Employer that questions going to the jurisdictional competence of this Board may be raised by a party at any time in any proceeding. For example, this Board has previously re-examined the jurisdictional authority upon which it issued a certification Order, in some cases, years after that certification Order had been issued. See: *The Canadian Association of Fire Bomber Pilots, supra*, and *CUPE v. Athabasca Health Authority Inc., supra*.

[34] We now turn to the specific questions arising in these proceedings.

Constitutional Jurisdiction for Labour Relations Involving the Subject Employees:

[35] From time to time, Labour Boards across Canada have been called up to determine whether or not the labour relations between particular groups or units of employees and their respective employer fall within Federal or Provincial jurisdiction. In *Northern Telecom Canada Ltd. v. Communications Workers of Canada, supra*, Dickson, J. on behalf of the Supreme Court of Canada stated the basic constitutional principles pertinent to such determinations as follows:

> *The best and most succinct statement of the legal principles in this area of labour relations is found in Laskin's Canadian Constitutional Law (4th ed., 1975) at p. 363:*
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> > *In the field of employer-employee and labour-management relations, the division of authority between Parliament and provincial legislatures is based on an initial conclusion that in so far as such relations have an independent constitutional value they are within provincial competence; and, secondly, in so far as they are merely a facet of particular industries or enterprises their regulation is within the legislative authority of that body which has power to regulate the particular industry or enterprise ...*
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> *In an elaboration of the foregoing, Mr. Justice Beetz in Construction Montcalm Inc.*

> *v. Minimum Wage Commission [[1979] 1 S.C.R. 754] set out certain principles which I venture to summarize:*
>
> > *(1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.*
> >
> > *(2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.*
> >
> > *(3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.*
> >
> > *(4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.*
> >
> > *(5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.*
> >
> > *(6) In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.*
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> *A recent decision of the British Columbia Labour Relations Board, Arrow Transfer Co. Ltd. [[1974] 1 Can. L.R.B.R. 29], provides a useful statement of the method adopted by the courts in determining constitutional jurisdiction in labour matters. First, one must begin with the operation which is at the core of the federal undertaking. Then the courts look at the particular subsidiary operation engaged in by the employees in question. The court must then arrive at a judgment as to the relationship of that operation to the core federal undertaking, the necessary relationship being variously characterized as "vital", "essential" or "integral". As the Chairman of the Board phrased it, at pp. 34-5:*
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> > *In each case the judgment is a functional, practical one about the factual character of the ongoing undertaking and does not turn on technical, legal niceties of the corporate structure or the employment relationship.*

[36] As noted by the Court, exclusive provincial competence over labour relations is the presumption. On the other hand, the Federal parliament may acquire or assert jurisdiction over labour relations in matters where such jurisdiction is "*vital, essential or integral*" to the Federal government's competence over an area of Federal jurisdiction. The existence of and scope of Federal jurisdiction over labour relations can be seen in section 4 of the *Canada Labour Code*, R.S.C. 1985, c.L-2, which provides as follows:

> *4. This Part applies in respect of employees who are employed on or in connection with the operation of any federal work, undertaking or business, in respect of the employers of all such employees in their relations with those employees and in respect of trade unions and employers' organizations composed of those employees or employers.*

[37] Generally speaking, the determination as to which constitutional authority prevails is arrived at by following a four (4) stage enquiry intended to elicit certain facts relevant to the determination (i.e.: the "*Constitutional facts*" described by the Supreme Court in *Northern Telecom, supra)* and to provide a road map to the analysis of those facts:

1. The identification of the area of exclusive Federal jurisdiction that gives rise to the potential that labour relations for a particular group of employees may fall under Federal authority. Because provincial regulatory authority over labour relations is the general rule, the specific area of Federal constitutional competence must be precisely understood and narrowly applied.

2. The identification and a consideration of the normal and habitual operations of the employer of the subject group of employees as a whole or, in the alternative, the subsidiary of the employer's operations within which the subject group of employees is located if that subsidiary is identifiable and severable from the larger operations of the employer. The question of whether the labour relations of an employer or identifiable subsidiary thereof, as the case may be, falls under Federal or Provincial jurisdiction is based on the normal or habitual activities of that business as a going concern without regard to exceptional or casual factors. See: *Quebec (Minimum Wage Commission) v. Construction Montcalm Inc.*, [1979] 1 S.C.R. 754, 93 D.L.R. (3rd) 641.

3. A function analysis of the operational connection or nexus between the work performed by the employees of the employer or an identifiable subsidiary operation thereof, as the case may be, and the core area of Federal competence. lt is trite law to say that provincial regulatory authority over labour relations is the general rule and Federal regulatory authority is the exception. However, Federal constitutional jurisdiction over a given subject (such as "aeronautics") can displace the application of provincial laws relating to labour relations (to avoid the

patchwork Provincial regulation of an area of national interest) but only if a functional analysis of the operations of an entity indicates that it is a Federal undertaking or work or an essential, vital or integral part of a Federal undertaking or work. See: *Construction Montcalm Inc., supra.* See also: *Four B. Manufacturing Ltd. v. United Garment Works of* America, [1980] 1 S.C.R. 1031, 1979 CanLII 11 (SCC). To be "essential, vital or integral", something more than a physical connection and/or a mutually beneficial commercial relationship must exist. To be "essential, vital or integral", there must be functional integration such that the effective performance of the core Federal undertaking's business must be dependent upon the functions performed by the employer or the identifiable subsidiary thereof. See: *Letter Carriers' Union of Canada v. Canadian Union of Postal Workers*, [1975] S.C.R. 178, 1973 CanLII 183 (SCC). See also: *United Transportation Union v. Central Western Railway Corp.* [1990] 3 S.C.R. 1112, 1990 CanLII 30 (SCC).

4. If the functional analysis described in step #3 is inconclusive, then the inquiry turns to whether or not the Provincial regulation (in this case, the regulation of labour relations) would impair the core of the Federal constitutional competence (in this case, the regulation of "aeronautics"). See: *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union, et. al.*, [2010] 2 S.C.R. 696, 2010 SCC 45 (CanLII).

[38] This Board has previously been called upon to make determinations as to whether or nor the labour relations of particular group of employees ought to fall within Federal or Provincial jurisdiction. For example, in *International Brotherhood of Electrical Workers, Local 529 v. Mudjatik Thyssen Mining Joint Venture*, [2003] Sask. L.R.B.R. 242, 91, C.L.R.B.R. (2d) 1, LRB File No. 271-00, this Board concluded that the work performed by electricians at a uranium mine was so vital, essential and/or integral to the mine's operations, which was conceded to be a Federal undertaking or work, as to bring those electricians within Federal jurisdiction. On the other hand, in *CUPE v Athabasca Health Authority, supra*, this Board concluded that the labour relations involving a unit of employees working at the Uranium City Municipal Hospital did not fall within Federal jurisdiction and, therefore, ought to be regulated pursuant to *The Trade Union Act* (Saskatchewan).

[39] There can be no dispute that the Federal government has exclusive jurisdiction over the regulations of "*aviation*" in Canada, including air transportation in general and airports, aircraft and air lines specifically. See: s. 2(e) of the *Canada Labour* Code. See also: *Johannesson v. West St. Paul (Rural Municipality)*, [1952] 1 S.C.R. 292, 4 D.L.R. 609. Air transportation is important to Canada's trade, its travel industry, national prosperity, and this country's international competitiveness. Canada's air sector depends on its airports. They operate in a network and link this country from coast to coast and with the rest of the world. Recognizing the importance of both air transportation and this country's network of airports (that make modern air transportation possible), the Federal government, through Transport Canada, regulates airports and sets and enforces safety and security standards, with which aerodrome operators must comply to maintain their respective operational certificates. In our opinion, the operation of the Saskatoon Airport is a Federal work, undertaking or business engaged in aeronautics. Therefore, the key issue for this Board is whether the work or functions performed by the Employer (or an identifiable subsidiary of the Employer) has a sufficient nexus to the operation of the Airport to displace the presumption of Provincial jurisdiction over labour relations.

[40] The Employer is one of two (2) local divisions of the Canadian Corps of Commissionaires in Saskatchewan. The Employer's *raison d'etre* is to provide employment opportunities for veterans and retired peace officers. Drawing on the skills and experiences of these individuals, the Employer provides a broad range of security services to a variety of clients, including the Federal government, the Provincial government, and the City of Saskatoon. The Employer bid on and was awarded the contract to provide security services at the Saskatoon International Airport. There are approximately twenty-seven (27) employees providing these services.

[41] In our opinion, the employees of the Employer providing security services at the Saskatoon Airport are an identifiable and severable subsidiary of the Employer's other operations. The evidence indicated that these employees work as a unit; that the majority of them were specifically hired to service this particular contract; that they were all trained in the specific security requirements and threats associated with operation of the Saskatoon Airport; that they have onsite supervision; and that they do not tend to intermingle with the Employer's other employees working on other security contracts. We find that the employees that are the subject matter of these proceedings were not integrated with the other employees of the

Employer sufficient to conclude that all of the Employer's employees ought to be considered as a single indivisible undertaking. Furthermore, we find that where these employees work, namely the Saskatoon Airport, provides an identifiable boundary for the purpose of defining a subsidiary operation. As a consequence, the issue to be examined is whether the normal or habitual services performed by this particular group of employees forms an integral part of the operation of the Saskatoon Airport; a Federal work undertaking or business engaged in aeronautics.

[42] Various aspects of the operation of airports and the air transportation system have been examined to determine whether or not labour relations for the employees involved in those operations fall within Federal or Provincial jurisdiction. For example, in *Canadian Air Line Employees' Association v. Northern Canada Air Ltd. and Narcanair Electronics Ltd.* [1980] 1 Can L.R.B.R. 535, the Canada Labour Relations Board concluded that a service company that installed, serviced and certified the avionic equipment on the aircraft belonging to an airline was vital to that airline's operations and its ability to comply with safety regulations of the Ministry of Transportation. As such, the Canada Board concluded that the labour relations involving the employees of that service company fell within Federal jurisdiction. By way of an example in this Province, in *Public Service Alliance of Canada v. City of Saskatoon, et. al.*, [1997] 39 C.L.R.B.R. (2nd) 161, the Canada Board concluded that a division of the Saskatoon Fire Department providing emergency response services (ERS) to the Saskatoon Airport was an identifiable subsidiary (i.e.: with the fire department of the City) and that the functions performed by that division formed an integral part of operation of the Saskatoon Airport; specifically that the existence of the Airport, as an international aerodrome, depended on the availability of the emergency response services provided by the airport division of the Saskatoon Fire Department. On this basis, the Canada Board found that labour relations for the airport division fell within Federal jurisdiction, while labour relations for the balance of the Saskatoon Fire Department continued to rest within Provincial jurisdiction.

[43] The reasons for decision of the Canada Board in *City of Saskatoon, supra*, also provides a helpful (albeit concise) summary of various other decisions where particular aspects of the operation of an airport or the air transportation system were examined and found to fall within either Federal or Provincial jurisdiction:

> *49 The essential and vital nature of ERS as it relates to Parliament's core jurisdiction over aeronautics is easily apparent when compared with other cases where the activities at an airport were not sufficiently connected to the core*

> *activity of "aerodromes, aircraft or a line of air transportation." For example, it has been determined that the operation of limousine or taxi services to the airport (Re Colonial Coach Lines Ltd. et al. and Ontario Highway Transportation Board et al. (1967), 2 O.R. 25 (H.C.), affirmed (1967), 63 D.L.R. (2d) 198 (Ont. C.A.); Murray Hill Limousine Service Limited v. Batson et autres, [1965] B.R. 77), a parking lot on airport premises (Toronto Auto Parks (Airport) Limited, [1978] OLRB Rep. July 682), a catering business for airlines (Baron W. Lewers (1982), 48 di 83; and 82 CLLC 16,179 (CLRB no. 372)), and porter services at an airport (Allcap Baggage Services Inc. (1990), 79 di 181; and 7 CLRBR (2d) 274 (CLRB no. 778)), were not sufficiently related to the field of aeronautics to bring them within federal jurisdiction. As stated by the Board in Baron W. Lewers, supra, federal authority did not need to extend that far to effectively regulate the field of aeronautics.*
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> *50 In contrast, activities such as the operation of runway maintenance (Re City of Kelowna, supra), the business of servicing, maintaining, inspecting, modifying, repairing, refueling and certifying aircraft (Butler Aviation of Canada Limited v. International Association of Machinists & Aerospace Workers, [1975] F.C. 590; Re Field Aviation Co. Ltd. and International Association of Machinists & Aerospace Workers, Local Lodge 1579 (1974), 45 D.L.R. (3d0 751 (Alta. S.C.); Innotech Aviation Limited (1993), 92 di 62 (CLRB no. 1018); E.S.F. Limited, doing business as Esso Avitat (1992), 88 di 185 (CLRB no. 949); and Selkirk College (1995), no B17/95, January 20, 1995 (BCLRB)), and the business of servicing and certifying avionic equipment (black boxes) (North Canada Air Ltd. and Norcanair Electronics Ltd. (1979), 38 di 168; and [1980] 1 Can LRBR 535 (CLRB no. 222)), have been found to be vital and essential to Parliament's jurisdiction over aeronautics. Similarly, it was held that airport security services such as pre-boarding screening and frisking of passengers fell within federal jurisdiction (Pinkerton's of Canada Ltd. (1990), 82 di 18; and 90 CLLC 16,061 (CLRB no. 820)). Finally, it is worth noting that the activity of air traffic control, which was recently privatized by virtue of the Civil Air Navigation Services Commercialization Act, S.C. 1996, c. 20, also falls within federal jurisdiction because it is an integral part of Parliament's control over aeronautics.*

[44] Having considered the evidence and argument presented in these proceedings, we find that the employees of the Employer providing security services to the Saskatoon Airport form an integral and vital part of the operation of the Airport. We agree with the position advanced by the Employer that the security services performed by the Employer's employees at the Saskatoon Airport are complementary to, and of no less significance than, the pre-board screening performed by CATSA employees. Just as the CATSA employees, who provide pre-board screening, are essential to the operation of the Airport; the employees of the Employer providing terminal security are also essential to the Saskatoon Airport Authority's ability to maintain its standing as a national and international airport. Of particular significance to this conclusion, we note that the Federal Government has imposed, through *Aviation Security Regulations*, specific security standards dealing with **both** pre-board screening and terminal security. The standards related to terminal security require an aerodrome operators to ensure that security personnel have particular clearances (including RAIC identification); that security

personnel must be present at all times at aerodromes; that security personnel must monitor and respond to threats to the aerodrome and to persons using that facility; that security personnel are responsible for monitoring and controlling access to restricted areas through the gate pass system; and that security personnel must patrol the aerodrome's security barriers, runways, and the terminal building. The normal or habitual activities of the subject employees involved the provision of the specific services required by the Federal government through the *Aviation Security Regulations*. The function of the Employer's employees providing security services at the Saskatoon Airport is to satisfy the very requirements arising out of the Federal government constitutional competence over "aviation".

[45] In our opinion, the ancillary services performed by these same individuals, including operation of the Airport's information kiosk and parking lot, do not meaningfully detract from the core security responsibilities of this group of employees. In this regard, we note that only a few of the subject employees have no specific security responsibilities and, arguably, all of the employees did or could play some role in security at the Airport even when working in the parking lot. In any event, the evidence indicated that the vast majority of the employees of the Employer working at the Saskatoon Airport were directly involved in the provision of terminal security in one form or another.

[46] In coming to this conclusion, we agree with the position of the Employer that the security services provided by the Employer and the circumstances under which these services are provided at the Saskatoon Airport are very similar to the type of security services and circumstances found to displace the presumption of Provincial regulations of labour relations in *Teamsters v. A.S.P., supra* and *P.S.A.C. v. Canadian Corps of Commissionaires, supra*.

[47] In our opinion, there is a clear and sufficient nexus between the security services provided by the Employer's employees at the Saskatoon Airport and the operation of that Airport and that this nexus specific relates to the core area of Federal constitutional competence; being the regulations of aviation. We find that the functions performed by the subject employees justify the conclusion that labour relations for these individuals falls under the provisions of the *Canada Labour Code* and not the provision of the *Act*. Simply put, the very purpose for which these individuals were retained by the Saskatoon Airport Authority was the fulfillment of federally imposed security standards essential to the operation of the Airport. As a consequence, we find

that functional integration has occurred and that the ongoing operation of the Saskatoon Airport depends on the provision of security services provided by the employees of the Employer.

[48] We are satisfied that the functional analysis of the normal and habitual activities of the subject employees, being a severable and identifiable subsidiary of the Employer, is conclusive in determining that the work performed by these employees forms an integral part of the operations of the Saskatoon Airport and thus the primary Federal jurisdiction over "aviation". As such and for the reasons described by Beetz J. of the Supreme Court of Canada in *NIL/TU,O Child and Family Services Society, supra*, we need not consider whether or not Provincial regulation of the entity's labour relations would impair the core of the Federal head of power at issue.

[49] For the foregoing reasons, we conclude that authority over the regulation of labour relations for the employees of the Employer providing security services at the Saskatoon Airport falls within exclusive Federal jurisdiction.

Application of Section 37.1 of *The Trade Union Act*:

[50] Because of our decision with respect to the first question, we find it unnecessary to answer the second question.

Conclusion:

[51] The Union's application must be dismissed. In our opinion, labour relations between the Employer and the employees providing security services at the Saskatoon Airport falls within Federal jurisdiction. As such, we are without authority to grant the remedy which the Union seeks in these proceedings. In coming to this conclusion, we make no findings with respect to the status of the Orders issued by this Board in LRB File Nos. 160-05 and 029-07.

DATED at Regina, Saskatchewan, this **15th** day of **February, 2012.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson