Federal Court of Appeal | Cour d'appel fédérale

Date: 20250717

Docket: A-201-25

Citation: 2025 FCA 135

Present: **WEBB J.A.**

BETWEEN:

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Applicant

and

AIRCRAFT MECHANICS FRATERNAL ASSOCIATION and AIR CANADA

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 17, 2025.

REASONS FOR ORDER BY: WEBB J.A.

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REASONS FOR ORDER

WEBB J.A.

[1] The International Association of Machinists and Aerospace Workers (IAMAW) has represented workers at Air Canada since 1941. Until recently it was the exclusive bargaining agent of approximately 11,500 technical, maintenance and operational support workers employed at Air Canada. The Aircraft Mechanics Fraternal Association (AMFA) filed an application with the Canada Industrial Relations Board (the CIRB) for certification, seeking to

represent approximately 2,250 Technical Services Business Unit employees of Air Canada who were part of the bargaining unit represented by IAMAW. In its decision issued on May 7, 2025 (2025 CIRB LD 5650), the CIRB found that fragmenting the existing bargaining unit was appropriate, accepted AMFA's description of the alternative bargaining unit and ordered a representation vote to be held.

[2] The CIRB also indicated that it "will provide detailed reasons for its decision to fragment the unit, and for its decision to accept AMFA's alternative bargaining unit description as appropriate".

[3] On May 12, 2025, the IAMAW informed the CIRB that it would be filing an application for judicial review of its decision. On May 14, 2025, the CIRB responded indicating that "the representation vote will proceed as planned, and [it] has ordered that the ballots be sealed until such time as the [CIRB] determines otherwise" (Order No. 1664-NB). The representation vote has now been held but the ballots remain sealed.

[4] IAMAW filed an application for judicial review of the decision of the CIRB and also an application to the CIRB to reconsider its decision.

[5] IAMAW brought this motion for:

> An order staying the Order and/or Decision of the Canada Industrial Relations Board dated May 7, 2025 [the "Order"], and all steps emanating therefrom, including inter alia sealing the ballot box, or if the votes have been counted, transferring representation rights to the Respondent Aircraft Mechanics Fraternal Association until the disposition of the Applicant's application to the Federal

> Court of Appeal for judicial review of the Order and those steps emanating therefrom.

[6] The representation vote that was ordered by the CIRB in its Order dated May 7, 2025, has been held. Therefore, this order cannot be stayed. However, since the ballots are sealed, any further proceedings could be stayed. Since IAMAW is seeking to stay the proceedings before the CIRB, the test for a stay as set out in *RJR-MacDonald v. Canada*, [1994] 1 S.C.R. 311 (*RJR-MacDonald)*, is the applicable test (*Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312, at para. 5; *Coote v. Lawyers' Professional Indemnity Company*, 2013 FCA 143, at para. 11).

[7] The Supreme Court of Canada in *RJR-MacDonald*, at page 334, set out the three-stage test to be applied in determining whether a stay should be granted:

> *Metropolitan Stores* adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits...

I. Serious Question

[8] The CIRB has not released its "detailed reasons for its decision to fragment the unit, and for its decision to accept AMFA's alternative bargaining unit description as appropriate". The AMFA, in its written submissions, stated "[b]ecause the [CIRB]'s reasons have not been issued,

neither the parties nor the Court can determine if those reasons were sound and consistent with the [CIRB]'s prior decisions on bargaining unit construction and fragmentation".

[9] This submission appears to presume a requirement to conduct a detailed analysis of the decision of the CIRB to determine if there is a serious question to be tried. However, the Supreme Court in *RJR-MacDonald* cautioned against conducting a detailed analysis at pages 337-338:

> Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[10] As noted by the CIRB in its decision:

> While fragmentations of established bargaining units are not unheard of, the [CIRB] rarely grants such fragmentations given its preference for broad-based units. The factors that the [CIRB] may rely on to justify fragmenting a unit are varied, and each case will be assessed on its own facts.

[11] The CIRB noted that decisions to fragment an established bargaining unit are rare and the relevant factors are varied. However, the CIRB did not identify the factors that it relied upon.

[12] I am satisfied that the IAMAW's application for judicial review is neither frivolous nor vexatious.

II. Irreparable Harm

[13] The Supreme Court in *RJR-MacDonald* noted at page 341 that "'[i]rreparable' refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other."

[14] The IAMAW submitted an affidavit of Dave Flowers, the President and Directing General Chairperson of the IAMAW. In his affidavit, he stated:

> if AMFA obtained a majority of votes and this fact is disclosed, IAMAW's reputation and relationship with its members and with the employer will be damaged, with the confidence of both in IAMAW undermined. In this respect, if the ballots are unsealed, counted and disclosed, and then it is determined that IAMAW remains the bargaining agent of the entire [Technical, Maintenance and Operational Support] bargaining unit, IAMAW will be unfairly and unnecessarily prejudiced in its ability to represent its members.

[15] This evidence of irreparable harm provided by the President and Directing General Chairperson of the IAMAW can be contrasted with the evidence presented in *Teamsters Local Union 847 v. Canadian Airport Workers Union*, 2009 FCA 44. In that case, which also was a motion for a stay of a representation vote (albeit for a change in union representation not a fragmentation of an established bargaining unit), Richard C.J., found that the evidence was insufficient to establish irreparable harm:

> [30] Teamsters 847 has not produced sufficient evidence of irreparable harm. The evidence before the Court is opinion evidence of an individual outside the bargaining unit speculating as to how certain actions have and will be perceived within the bargaining unit.

[16] The evidence of the IAMAW in this motion is that of the President and Directing General Chairperson of the IAMAW. He is in a position to provide direct evidence on the potential harm to IAMAW. As noted by the Supreme Court in *RJR-MacDonald*, it is the nature of the harm and not its magnitude that is relevant. The President and Directing General Chairperson of the IAMAW identified harm to the reputation of IAMAW and its relationship with its members and the employer, if the vote favoured the AMFA, the IAMAW is successful in its judicial review application and the stay is not granted. This type of harm cannot be quantified in monetary terms.

[17] While the result of the vote is speculative, there are only two possible outcomes – either the workers voted for the IAMAW or the AMFA. If the result of the vote is that the IAMAW is retained as the union representing the particular workers identified as the proposed bargaining unit, then the status quo is maintained and the judicial review application will be moot. It would then be irrelevant whether the stay is granted. If, however, the result of the vote is that the employees chose the AMFA and the IAMAW is successful in its judicial review application, then the harm identified by the President and Directing General Chairperson of the IAMAW will be realized if the stay is not granted.

[18] In my view, this is sufficient, for the purpose of determining whether the stay will be granted, to establish that the IAMAW would suffer irreparable harm if the stay is not granted.

III. Which Party Will Suffer Greater Harm?

[19] The harm that will be suffered by the AMFA if the stay is granted and IAMAW is not successful in its judicial review application is a delay in being the chosen bargaining agent for the employees who are part of the proposed bargaining unit, assuming that the result of the vote is that these employees chose the AMFA. This harm is speculative in the same way that the harm identified by the IAMAW is speculative – the result of the vote is not known. If the vote is in favour of the IAMAW, then there would be no harm to the AMFA if the stay is granted.

[20] Since the IAMAW has represented these workers for decades, the harm suffered by a delay (assuming that the vote was in favour of the AMFA, IAMAW's judicial review application is unsuccessful, and the stay is granted) is outweighed by the potential harm that would be suffered by the IAMAW if the vote was in favour of the AMFA, IAMAW's judicial review application is successful, and the stay is not granted.

IV. Conclusion

[21] As a result, the stay will be granted and the order will provide that the CIRB is not to take any further action in relation to the representation vote and, in particular, is not to unseal the ballots until this Court renders its decision on IAMAW's application for judicial review or this application for judicial review is discontinued. The costs of this motion shall be in the cause.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-201-25
STYLE OF CAUSE:	INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS v. AIRCRAFT MECHANICS FRATERNAL ASSOCIATION and AIR CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	WEBB J.A.
DATED:	JULY 17, 2025

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