

Canada Industrial Relations Board



Conseil canadien des relations industrielles

Order No.: 9996-U

Amends: 9085-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, on April 21, 2006, the Canada Industrial Relations Board ("the Board") issued Order No. 9085-U to reflect an agreement between the parties and, since that date, the International Association of Machinists and Aerospace Workers ("the IAMAW") has been the certified bargaining agent for a unit of employees comprising:

"all employees of Air Canada, ACTS Limited Partnership, AC Cargo Limited Partnership and ACGHS Limited Partnership engaged in technical, maintenance and operational support functions, excluding those performing management functions or those employed in a confidential capacity in matters relating to industrial relations and otherwise, and excluding any employees covered by a certification order and employees in discrete positions and functions not included within the scope of the bargaining units in either of the former Air Canada or Canadian Airlines International Ltd. prior to their merger."

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;

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AND WHEREAS the sale that occurred on October 16, 2007 related to the maintenance, repair and overhaul business conducted by ACTS LP, including the delivery of heavy maintenance, engine maintenance and component maintenance services ("the MRO business") of Air Canada;

AND WHEREAS, on June 25, 2010, Air Canada and Aveos filed a joint application with the Board pursuant to sections 18.1, 44, 45 and 46 of the *Canada Labour Code (Part I-Industrial Relations)* ("the Code") seeking a declaration of sale of business and orders from the Board to facilitate the transition of employees from Air Canada to Aveos;

AND WHEREAS Air Canada Cargo (AC Cargo) Limited Partnership and Air Canada Ground Handling Services (ACGHS) Limited Partnership were dissolved effective November 30, 2009;

AND WHEREAS the Board has determined that a sale of business within the meaning of section 44 of the *Code* has taken place and that Aveos Fleet Performance Inc. is the successor employer to ACTS LP and is a distinct employer separate from Air Canada, and has this day issued certification orders 9994-U and 9995-U consequential to this finding;

NOW, THEREFORE, the Canada Industrial Relations Board hereby amends Certification Order 9085-U by:

(a) deleting therefrom all references to Air Canada Technical Services (ACTS) Limited Partnership, Air Canada Cargo (AC Cargo) Limited Partnership and Air Canada Ground Handling Services (ACGHS) Limited Partnership; and

(b) amending the description of the bargaining unit for which the trade union is certified to read as follows:

"all employees of Air Canada engaged in technical, maintenance and operational support functions, excluding those performing management functions or those employed in a confidential capacity in matters relating to industrial relations and otherwise, and excluding any employees covered by another certification order and employees in discrete positions and functions not included within the scope of bargaining units in either of the former Air Canada or Canadian Airlines International Ltd. prior to their merger."

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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 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 *Code* and directed the parties to cooperate in implementing the terms of 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 the parties have been unable to reach agreement on certain issues arising from the sale of business and consequent revision of the bargaining unit;

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

- (1) the Heavy Maintenance Separation Program offered to the IAMAW by Air Canada on January 13, 2011, as set out in Appendix A of this Order, is to be implemented;
- (2) due to the impossibility to respect the time lines set out in section 4 of Appendix A 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;
- (3) Article 20.07 and all subcontracting and contracting out provisions contained in the collective agreement between Air Canada and the IAMAW for the technical, maintenance and operational support bargaining unit no longer apply to any work performed in relation to the MRO business (i.e., heavy maintenance, engine maintenance and component maintenance) declared to have been sold to Aveos Fleet Performance Inc. pursuant to section 44 of the *Code*;
- (4) the Letter of Agreement between Air Canada and the IAMAW dated January 8, 2009 concerning Article 20.07 of the collective agreement continues to apply for the duration stated therein;
- (5) the parties are to fully comply with the terms of the January 8, 2009 MOA, as amended by the June 8, 2009 MOA, and the Heavy Maintenance Separation Program.

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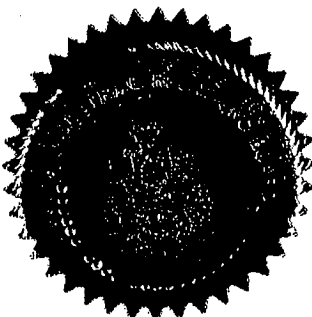
AND FURTHERMORE, the Board hereby declares that the January 8, 2009 MOA, as amended by the June 8, 2009 MOA, the Heavy Maintenance Separation Program ordered pursuant to paragraph 1 of this Order and attached as Appendix A, and the present Order properly and fully dispose of all matters arising from 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



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Appendix A

Heavy Maintenance Separation Program

Air Canada proposes to offer a separation program to IAMAW-represented Aveos employees who were employed as of the date of the requested order establishing separate bargaining units for Aveos employees, as follows:

- 1) The separation program will consist of a maximum of 1,500 separation packages.
- 2) A separation payment under this program shall be an amount representing two weeks' pay for each completed year of continuous service at Air Canada and Aveos up to a maximum of 52 weeks, service to be calculated at the time of granting the separation package. The separation payment will be based on the eligible employee's base hourly rate for a 40-hour work week.
- 3) The separation packages, up to the maximum number expressed in para. 1 above, will be made available to IAMAW-represented employees at any time up to June 30, 2015, in the event that employees are permanently laid-off, or terminated or a temporary layoff becomes permanent as a direct result of Aveos ceasing to be the exclusive provider of heavy maintenance services to Air Canada, other than in circumstances described in para. 4 below. Such an event may occur before June 30, 2013, but no later than June 30, 2015.
- 4) The separation packages, up to the maximum number expressed in para. 1 above, will also be made available at any time up to June 30, 2013 to IAMAW-represented employees, in the event of an insolvency, liquidation or bankruptcy involving Aveos resulting in the cancellation of Air Canada-Aveos contracts and in the termination or permanent layoff of IAMAW-represented employees.
- 5) Air Canada will take all reasonable steps to ensure that monies paid for the benefit of IAMAW employees of Aveos are paid directly to these employees.
- 6) Aveos has and shall have no liability whatsoever or financial responsibility for the Program.
- 7) Other elements of this separation program will be consistent with the provisions of similar, prior programs involving IAMAW-represented Air Canada employees.
- 8) Any disputes of implementation concerning this separation program that cannot be resolved by Air Canada, the IAMAW and Aveos shall be referred for final and binding mediation/arbitration before Martin Teplitzky, Q.C. or to a mutually agreed alternative arbitrator.
- 9) Any separation package extended to an employee by Air Canada under this separation program is inclusive of and in complete satisfaction of any and all payment in lieu of notice of termination or layoff and severance pay to which an employee in receipt of the separation

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package may be entitled from Air Canada and/or Aveos under the *Canada Labour Code* ("the *Code*") and under the applicable collective agreement.

- 10) The separation payments contemplated by the Air Canada separation program fulfill any and all requirements for severance pay, in relation to employees in receipt of separation payments, in any adjustment program negotiated or arbitrated under Division IX of the *Code* and the provisions of section 228 may be invoked as may be necessary to confirm this result.