

IAM ACPPA Case – March 2011

In March 2011 the IAMAW filed its own court case under the Air Canada Public Participation Act.

At that time the Labour Board had just issued an order that – for the first time - allowed Air Canada to have its maintenance work carried out by employees of Aveos - even though ACTS had been a separate company since 2004 and even though Air Canada sold ACTS to Aveos in 2007.

The fact that in 2011 Air Canada's maintenance work was still being done by Air Canada employees was a direct result of the IAM's actions and litigation from 2003 to 2011.

The IAMAW was unfortunately not successful in its 2011 ACPPA application.

The Court gave two reasons for its decision.

First, the judge decided that Air Canada was still complying with the law while the work was still being carried out in the required locations, as it was at that time.

Second, the judge ruled that the Union had no "standing" to file the application.

The Court based this finding on a Labour Board Order directing the Union to implement a "transition agreement", that set out how transition was to be carried out IF the Board ordered transition.

The IAM had previously fought the transition from Air Canada to Aveos at the Board - as well as under the ACPPA. The Court found the Union to have no standing because - in its view - the ACPPA application amounted to an attempt to get around the Board's order – which had said that its order was to "fully dispose" of "all matters arising from the sale" of ACTS to Aveos.

The Union never agreed with that decision on standing, but it is legally bound by the Court's decision, which meant that it could not file the application again in its own name when Aveos went bankrupt and the work moved away.

That was the only reason that the Union did not lead the case when Aveos closed, and instead pushed the Manitoba and Quebec governments to act.

In the end, as you know, the Quebec government (which is not the same government as the one that settled the case) filed an application and the Manitoba government decided to intervene in the litigation, without filing an application of its own.

Since Quebec is the only applicant it brought that case to an end by settling it. No-one else can enforce the existing Court order.

The IAMAW was not consulted on this settlement and had no part of it.

The federal government has now announced that it is going to change the law to protect Air Canada from any other litigation in relation to Quebec. If the government does this there will be no legal case for anyone to file. Air Canada can't be found to be breaking a law that doesn't exist anymore.

IAM is therefore now pressing the federal government that it should not sell out Canadian aircraft maintenance workers by changing the law to protect Air Canada. Air Canada made its decisions to send its work overseas after Aveos' closure in the full knowledge that it was bound by the ACPA.

Background History of litigation for Air Canada/ Aveos

First Single Employer Applications – Air Canada and ACTS - 2003

Air Canada had begun to spin off its internal divisions into separate wholly owned corporations before its insolvency in 2003. The IAM saw the risks to its membership and applied to the Labour Board for “single employer” declarations that would keep its bargaining rights intact and keep Air Canada's work with Air Canada employees.

Air Canada's Insolvency Proceedings – 2003 - 4

The Board applications were interrupted by Air Canada's insolvency in 2003 -triggered by a series of financial shocks to the aviation industry. and in part by a global financial crisis. Air Canada took up the proceedings as an opportunity to restructure to achieve some of its long standing goals. It also was a target for strategic investors who wanted a fast cash return on their investment.

In these proceedings Air Canada was fragmented into a number of different operating companies under a holding company “Ace Aviation”, whose owners would receive the profits as the various new divisions were sold off, setting the stage for the sale of ACTS.

The Union was able despite enormous pressures to protect members' pensions and pension plan.

Post CCAA Single Employer Applications – 2004 Air Canada ACTS

The Union filed further single employer applications as soon as Air Canada exited from insolvency protection barring litigation.

These applications kept the bargaining unit intact and the work with Air Canada employees, by adding to the certificate the various internal companies created by Air Canada, including Air Canada Technical Services and ZIP Air.

ACTS Sale – Unfair Labour Practice Application – 2006-7

The IAM filed an unfair labour practice complaint concerning the sale of ACTS to what would become Aveos. The IAM was able to negotiate a “freeze” agreement that would keep all of its members at ACTS employed with Air Canada, despite the sale of ACTS to Aveos, pending further discussions with the Union.

The sale of ACTS to Aveos was finalized in 2007. Under the Canada Labour Code a sale of business automatically transfers to the new employer union bargaining rights and the terms of an active collective agreement – but to a different and separate unit.

The IAM's freeze agreement and the ongoing discussions kept all of the IAM's members employed with Air Canada across the sale transaction. Management and non-union employees went over to Aveos in 2007.

The discussions under the freeze agreement resulted in a "transition MOA" that set out the procedures for transition – and that was triggered ONLY IF Air Canada was able to get orders confirming the sale and splitting the unit.

At no time did the IAMAW agree that transition should take place – only how it would take place if it took place. In fact the IAM fought transition both at the Board and in the Courts through the 2011 ACPPA case.

2009 Negotiations

Air Canada was in need of financial and pension regulatory relief and the Union used this leverage to negotiate a contract which barred Air Canada from going to the Board to get an order to transition employees to Aveos until at least the end of the extended contract and not at all unless Aveos achieved a viable restructuring plan.

Aveos Air Canada Single Employer Application - 2010

When the collective agreement extension was up and Aveos came forward to say that it had successfully restructured, the Union did not agree that Aveos was viable and fought Air Canada's attempt to go to the Board, based on its agreement. However, a labour arbitrator allowed Air Canada's case to go forward to the Board.

The IAM then filed an application before the Canada Industrial Relations Board to keep the bargaining unit intact and to keep the work with Air Canada employees. It argued that Aveos' was being propped up by Air Canada to take over Air Canada's liabilities to employees and that the sale should not be recognized as effective to fragment the bargaining units.

The Board did not accept this argument, but it did accept as significant the Union's concerns about the financial viability of Aveos. The result was that Air Canada placed an offer before the Union and the Board of a separation program that would provide up to 52 weeks of severance pay to former Air Canada members whose jobs were lost at Aveos either as a result of the loss of Air Canada's heavy maintenance contract, or as a result

of a subsequent Aveos insolvency within a fixed period after the bargaining units were split and Air Canada employees became employees of Aveos.

The Board incorporated this offer into its ultimate order dividing the units.

As a result of the Union's various actions the transition of IAMAW represented employees to Aveos did not take place until July 2011, despite the fact that ACTS had been created seven years before and sold four years ago. During this time all the IAMAW's members maintaining Air Canada's aircraft remained employees of Air Canada .

ACPPA Court and Injunction Application – 2011

When Board had rejected the Union's application and authorized the splitting of the unit as a result of the 2007 sale, the Union launched a Court application under the Air Canada Public Participation Act, along with an application for an injunction to stop the transition of employees to Aveos.

These applications were not successful, in part because the work was still being carried out in the locations specified by the Act at the time it was launched.

Under the *ACPPA* and its corporate articles Air Canada is obliged

“to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga”.

On the question of whether Air Canada was, in 2011, in compliance with its obligation "to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga" the Court held that:

“Air Canada does maintain operational and overhaul centres... by maintaining overhaul operations under its contracts with Aveos and by itself maintaining certain overhaul functions through its line maintenance operations”.

The Court also held that the Union did not have standing to file the application, with reference to the Board's Order to the Union to implement the transition process set out in the transition MOA.

However the Union's application did provide the foundation for the later applications launched by the Manitoba and Quebec governments after Aveos's bankruptcy when the work began to move away from the named locations.

Aveos Bankruptcy Proceedings - 2012

In March 2012 the Union's views about Aveos' viability were confirmed when Aveos closed its doors and filed for bankruptcy protection under the Companies' Creditors Arrangement Act ("CCAA").

The Union fought hard for its members interests in that insolvency. It was able to get the following:

- Full payment of base wages and expense claims outstanding when Aveos closed its doors;
- Repayment of amounts owed in the overtime bank, based on legal arguments made by the Union;
- Early payment to all members of the \$2000 wage priority under insolvency legislation. These payments are not normally made before the close of proceedings, an event which has STILL not yet taken place, as of March 2016.
- Jobs for certain former Aveos members at AJ Walter and Lockheed resulting from agreements between the Union, the government, the parties to the court proceedings and buyers that pushed for and facilitated going concern sales of Aveos' operations.
- Protection of members' Air Canada pension entitlements with Air Canada to the date of transition. The planned transfer of pension liabilities to Air Canada was blocked by the Union. The plans were in deficit at the time and there would have been cuts to pension entitlements without this.
- 55 million dollars worth of payments to the IAM's members under the Air Canada Separation Program resulting from the Board's Orders in the IAM's application to the CIRB fighting transition.
- Representation in an employee claims process that maximized members recovery from the Wage Earner Protection Program
- Unique legal outcome that allowed members to receive the full WEPP recovery up to the full 3,500 cap as well as payment of the full 2,000 priority, which is usually deducted from the 3,500 - and in addition to separation program payments.
- 4.37 million dollars paid to one hundred and fifteen (115) former Aveos members of the IAMAW on LTD at the time of Aveos' bankruptcy or entitled to post-retirement benefits at the time of transition.