

Aveos closed its doors on March 18, 2012 and filed for protection under the Companies' Creditors Arrangement Act on March 19, 2012.

Aveos' insolvency was the end of a story that began years before.

For more than a decade before Aveos' closure the IAM had taken every step available to it to protect its members in the face of the large scale structural forces threatening its members' wages and job security threatening its members at Air Canada, including: the pressure to outsource to push down labour costs; the fragmentation of operational businesses by venture capital to generate one-time windfalls for shareholders; globalization that saw aircraft maintenance work flow offshore in search of low labour costs and a financial crisis that threatened to wipe out the pensions earned over past decades by thousands of former and current members of the Union.

First Single Employer Applications - 2003

Air Canada had begun to spin off its internal divisions into separate wholly owned corporations even before its insolvency in 2003. The IAM had immediately seen the risks that this posed 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

Those applications were interrupted by Air Canada's insolvency in 2003. This insolvency was triggered in part by a series of financial shocks to the aviation industry. and in part by a global financial crisis. That crisis was leaving established companies with defined benefit pension plans holding large deficits that needed - under then current law - to be paid off from operating funds over a five year period. The resulting in large financial obligations then threatened the viability of the operations.

Air Canada, while legitimately in need of relief from pension regulatory obligations, took up the resulting insolvency proceedings as an opportunity to restructure to achieve some of its longer standing goals. It also became a target for strategic investors who wanted a fast cash return on their investment. The result was that 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.

On the Union's side – it was able despite enormous pressures to protect members' pensions and pension plan through Air Canada's CCAA proceedings.

Post CCAA Single Employer Applications

The Union moved quickly to pick up the pieces as soon as it could when Air Canada emerged from insolvency protection. It filed further single employer applications which served to keep 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.

The members of all unions at Air Canada nonetheless made extensive concessions in the CCAA proceedings in order to save Air Canada and their jobs. Therefore when, in 2006 Air Canada announced the plan to sell ACTS and cut loose thousands of employees who had made personal sacrifices for the sake of its survival, the union and its members felt a deep sense of betrayal.

ACTS Sale – Unfair Labour Practice Application

The IAM filed an unfair labour practice complaint concerning the lack of information being provided to it concerning the sale of ACTS to what would ultimately become Aveos.

In the course of this proceeding 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 only thing that can stop this is a single employer application.

It was only the IAM's freeze agreement and the ongoing complex negotiations on behalf of its members that kept all of the IAM's members employed with Air Canada across the sale transaction. Management and non-union employees – including their pension rights - transferred over to Aveos in 2007.

The lengthy discussions under the freeze agreement were interrupted in by the news in early 2009 that Aveos was in financial trouble and needed to restructure its financial arrangements.

The discussions under the freeze agreement ultimately resulted in a the "transition MOA" which is a document that was only triggered if Air Canada was otherwise able to split the unit and set out the procedures for transition and the rights of employees. At no time did the IAMAW agree that transition would take place – only how it would take place if the Board issued the order.

2009 Negotiations

In Air Canada found itself in need of further financial and pension regulatory relief and the Union used this leverage to negotiate, in conjunction with support for pension regulatory relief, a contract extension with some enhanced terms which barred Air Canada from trying to get the 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

When the collective agreement extension was up and Aveos came forward to say that it had successfully restructured, the Union's conclusion was that Aveos was not in fact viable except as artificially propped up by Air Canada. It fought Air Canada's attempt to go to the Board, but an arbitrator allowed Air Canada's case to go forward.

The IAM then filed an application before the Canada Industrial Relations Board in which it argued that Aveos' financial problems meant that it remained under the direction and control of Air Canada 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, with the result that, in mediation, 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 remained employees of Air Canada and members of Air Canada's pension plan were able to accrue more time in the plan.

ACPPA Court and Injunction Application

On learning that the Board had denied 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. This application was 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”.

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.

The Court also held that the Union did not have standing to file the application, with reference to the transition agreement.

Note: The reasons that the Union did not file this application in 2004 or 2007 have been since shown to be well founded. First, there was little or no chance of success while Air Canada's work was being carried out by Air Canada employees in the required locations that it would have been found to be violating the law. Second, the Act is vaguely worded and the Union was aware that it would be years after even a successful ruling before it would be possible to obtain a court order with specific directions to Air Canada – too late to save its members. Third, the IAM has always known that the ACPPA is built on political quicksand – with Canadian governments having long made statements suggesting that the Act would be changed if AC's business plans were substantially affected by its terms. The (former) liberal government made this statement way back – the Harper government went on record with the position that AC was in compliance as far as it was concerned. Current events with the present liberal government have shown this to be true, with an apparent agreement to amend the law at Air Canada's request as soon as a Court decision looked to be likely to have real effects.

Aveos Bankruptcy Proceedings

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

At the time of its bankruptcy and closure in March 2012 Aveos owed its employees approximately two weeks of wages for their final weeks of work, in addition to unpaid expense claims and all the amounts payable under the collective agreement and employment standards laws to employees on termination, including vacation pay, payment of wages held in an overtime bank, and the amounts payable in lieu of notice of termination and severance after long careers that began at Air Canada, in many cases decades before.

In many employer bankruptcies employees receive little or no recovery on amounts owing to them, outside of amounts covered by the government Wage Earner Protection Program.

However, in the course of the Aveos insolvency proceedings the Union was able to achieve very significant recovery for its members – in many cases through novel legal approaches and agreements that have not been seen either before or since, including the following:

- Full payment of base wages and expense claims outstanding when Aveos closed its doors and entered insolvency protection, paid shortly after closure and paid from Aveos' assets otherwise frozen by the insolvency proceedings;
- Repayment to members of amounts originally deducted by Aveos from unpaid wages to reflect negative balances in the overtime bank, based on legal arguments made by the Union;
- Early payment to all members of any outstanding amounts covered by the \$2000 wage priority under insolvency legislation. These payments are not normally made before the close of proceedings, an event which we note has not yet formally taken place, as of October 2015
- 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.
- Full 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. If pension assets had been transferred to Aveos at any point after 2007, the Aveos plan would have been wound up with a significant solvency deficit, resulting in slashed pension entitlements to all Aveos members. The Air Canada plan is now in surplus due, in significant part, to changes pushed for by the Union – including a revised approach to investment and the agreed upon regulatory changes.
- IAM members received 55 million dollars worth of payments under the Air Canada Separation Program as a result of the IAM's application to the CIRB resisting the division of the union as a result of Aveos' sale and as a result of Aveos' insolvency – which was a risk anticipated by the Union and of which it was able to convince the Labour Board.

These payments were made by Air Canada to former Air Canada employees who transitioned from Air Canada to Aveos and who lost their jobs when Aveos closed. These payments were of up to 52 weeks of wages and totalled around \$55 million. In the course of the mediation – arbitration provided for under the CIRB order the Union was able to obtain sufficient funds from Air Canada to pay the full package to all of its members – despite the original limitation to 1500 packages – essentially in exchange for taking on the considerable administrative task of ensuring that its members received their proper entitlements – recognizing the wages and seniority of Aveos members after transition from Air Canada (records that Air Canada did not have).

- The Union also represented its members in an employee claims process – filing claims on their behalf and arguing a significant number of issues of principle on their behalf.

- Aveos had no funds to pay unsecured claims, and the Union was able to ensure that its members got access to the federal government's Wage Earner Protection Program (WEPP). Proceedings under the CCAA do not trigger the WEPP and, without the Union, Aveos could have wound up under the CCAA, with no bankruptcy and no triggering of the WEPP.
- The Union also pushed to make sure that payments would be available as soon as the WEPP was triggered by Aveos ending its CCAA process and entering bankruptcy under the Bankruptcy and Insolvency Act.
- The Union was also successful in reaching an agreement with the government and Aveos that allowed its members to receive from the WEPP recovery up to the full 3,500 cap – despite the fact that they had already received payments of up to 2,000 after the date that Aveos entered CCAA protection. Without this deal any amounts paid out to members after March 2012 would have been deducted from their 3,500 entitlement. This arrangement had never been put in place in Canada before and as far as we are aware this arrangement is still unique. It meant that the IAM's members were able to recover up to approximately 5,500 of amounts owed to them by Aveos at the time of closure – in addition to any payments under separation program.
- In addition the Union argued on behalf of its members to maximize their individual recovery from the WEPP – reaching agreements to have the broadest possible range of debts defined as "wages" and therefore covered by the program. Extensive legal arguments were made on a number of issues, including the entitlement to payments owed by the overtime bank and collective agreement notice payments to new employees not entitled to receive notice under the Canada Labour Code's notice requirements.
- At the time of its closure Aveos was paying out of its general revenues LTD payments to certain employees who had transitioned to Aveos from Air Canada while on disability leave, and for whom Aveos had not been able to obtain LTD insurance. On closure these individuals lost their benefit payments which they had expected to run until their retirement or recovery. This group was among the most vulnerable and hardest hit by Aveos' closure which saw them cut them off from established disability benefits, typically with no access to unemployment insurance benefits

Air Canada and Aveos had been party to a contract concerning the transfer of pension and benefit liabilities to Aveos under which Air Canada was liable to make payments to Aveos to cover the costs of paying LTD to this group, as well as certain costs related to Aveos' obligation to pay post-retirement benefits approximately 100 IAM members who qualified for those benefits at the date of transition. The Court approved a motion that resulted in payments by Air Canada totalling 4.37 million dollars going to one hundred and fifteen (115) former Aveos members of the IAMAW outside of the general distribution pool in the insolvency.

Quebec ACPPA Application

The IAMAW was instrumental in persuading the Quebec and Manitoba governments that there were legal grounds for them file a new application under the ACPPA based on the changed facts after the closure of Aveos. The Union also took an active role in support of this process, providing legal materials, evidence and witnesses. The Union could not file its own application due to the prior ruling on standing.

On February 4, 2013 the governments obtained a declaration that the closure of Aveos had brought Air Canada into violation of the ACPPA. This decision was affirmed by the Court of Appeal.