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On June 1, 2011, Ogilvy Renault joined Norton Rose Group.

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## Canada Post Corporation – CUPW, CPAA, APOC, PSAC (27915-C)

Please see the attached.

Thank you.

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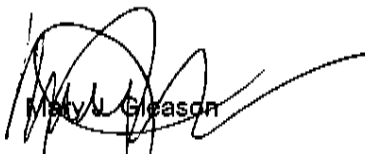
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Dear colleagues:

**In the matter of the Canada Labour Code (Part I - Industrial Relations) and an application filed pursuant to section 18.1 concerning Canadian Union of Postal Workers, applicant; Canada Post Corporation, employer; Canadian Postmasters and Assistants Association, bargaining agent; Association of Postal Officials of Canada and Public Service Alliance of Canada, interested parties. (27915-C)**

Please find attached our Responding Submissions in the above noted matter. The Supporting Book of Documents will follow by courier.

Yours very truly,

  
Mary J. Gleason  
MG/sd  
Enclosures

DOCSOTT: 879547\2

July 12, 2011

**By Hand**

**Mr. Andrew C. Boyle**  
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Your reference  
27915-C

Our reference  
00106335-0482

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Dear Mr. Boyle:

**In the matter of the Canada Labour Code (Part I - Industrial Relations) and an application filed pursuant to section 18.1 concerning Canadian Union of Postal Workers, applicant; Canada Post Corporation, employer; Canadian Postmasters and Assistants Association, bargaining agent; Association of Postal Officials of Canada and Public Service Alliance of Canada, Interested parties. (27915-C)**

Further to the decision of the Board of May 16, 2011 in the above referenced matter, please find enclosed our responding submissions to CUPW's submissions filed with the Board on June 13, 2011.

I have forwarded a copy of the present to counsel for the other parties.

Yours very truly,



Mary J. Gleason  
MG/sd

Enclosures

cc Gaston Nadeau  
Sean McGee  
George Rontirs

DOCSOTT: 879545\1

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**BOARD FILE NO. 27915-C**

**CANADA INDUSTRIAL RELATIONS BOARD**

**BETWEEN:**

**Canadian Union of Postal Workers**

**Applicant**

**and**

**Canada Post Corporation**

**Employer**

**and**

**Canadian Postmasters and Assistants Association**

**Bargaining Agent**

**and**

**Association of Postal Officers of Canada**

**Interested Party**

**RESPONDING SUBMISSIONS OF THE CORPORATION**

***Introduction***

1. In its submissions filed with the Board on June 13, 2011 ("additional submissions"), the Canadian Union of Postal Workers ("CUPW") argues that the facts which necessitated a bargaining unit review when CUPW filed its initial application in early 2010 continue to be present and, indeed, that the events of the last few months further support the need for and urgency of a review of the bargaining units at Canada Post Corporation ("CPC or the "Corporation").

2. CPC disputes this assertion and notes that, if anything, the events of the last few months make it even clearer than before that CUPW is attempting to illegitimately use the Board's bargaining unit review process to obtain tactical advantages in collective bargaining.
3. Indeed, CUPW's additional submissions eloquently demonstrate what is at the heart of this instant Application, namely, a desire to represent a greater number of employees in the hope of being able to garner a stronger position for future rounds of collective bargaining with the Corporation.
4. As we noted in our original Response, the Board has repeatedly held that review applications based on tactical reasons or to obtain greater bargaining strength are not a proper use of the bargaining unit review process.
5. We accordingly submit that the instant Application should be dismissed.

***CUPW's Allegations Regarding the Current Round of Bargaining are Erroneous***

6. CUPW first makes reference in its additional submissions to the developments in collective bargaining and asserts, without citing any examples, that the presence of separate bargaining units has rendered negotiations between CPC and CUPW more difficult than they otherwise would have been if there were a single operational bargaining unit.
7. CUPW notes in this regard that since pleadings were last filed with the Board, the Canadian Postmasters and Assistants' Association ("CPAA") concluded a collective agreement with the Corporation, but its contents were decided in part by an interest arbitrator. Mention is also made of the fact that negotiations for the Rural and Suburban Mail Service Carriers ("RSMCs") are now before Mr. Brian Keller as arbitrator/mediator.
8. With respect to the urban operations bargaining unit, CUPW notes that the parties acquired and exercised the right to strike/lock-out and were still in negotiations (at the date of counsel's letter). Since the filing of the additional submissions, Parliament has enacted back-to-work legislation,

providing for final offer selection arbitration to resolve the next collective agreement for the urban operations unit.

9. CPC submits that the reference to the latest developments at the RSMC and CPAA bargaining tables is not in any way indicative of a problematic bargaining relationship.
10. In fact, it is clear that sophisticated parties such as CPC and many of its unions, namely, CPAA, CUPW and the Association of Postal Officials of Canada ("APOC"), recognise that the use of an independent third party decision-maker may sometimes be an efficient and effective means of successfully concluding a collective agreement. This recognition of the value of the interest arbitration process is illustrated by the fact the Corporation and all of the unions who are parties to this Application freely negotiated the inclusion of such a process in their collective agreements.
11. If parties, upon occasion, avail themselves of the dispute resolution process they freely negotiated, this fact cannot be indicative of the need for the Board to embark upon a bargaining unit review under s. 18.1 of the *Code*.
12. Indeed, the Board's case law recognizes that the exercise of the right to strike or lock-out by parties is not indicative of labour relations, nor does the exercise of such rights mean that a bargaining unit review is warranted. In this regard, for example, in *Radio Canada*<sup>1</sup> the Board gave short shrift to an argument that because work disruptions that had occurred the situation justified its intervention under s. 18.1 of the *Code*. The Board stated that the occurrence of a strike and lock-out were "...not indicators of poor labour relations. On the contrary, it would be unusual for a corporation as large as SRC not to have been involved in any...disputes".<sup>2</sup>
13. *A fortiori*, a referral to interest arbitration pursuant to the terms of a collective agreement certainly is not indicative of poor labour relations.

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<sup>1</sup> *Radio Canada*, [2005] CIRB No. 307.

<sup>2</sup> *Radio Canada, supra*, at para. 51.

14. Moreover, with respect to CPAA, it is worth noting that virtually all issues at the CPAA table were resolved without any reference to the interest arbitrator, which stands as further evidence of a complete absence of basis for the claims of CUPW in their additional submissions. Both CPAA and the Corporation agreed to allow Arbitrator Michel Picher to decide the one remaining issue not concluded at the table, namely the wage rate in the first year of a five (5) year agreement. This can hardly be said to be a failure of collective bargaining or indicative of poor labour relations. A copy of the award issued by Arbitrator Picher is at Tab 1 of the Corporation's Supplemental Book of Documents.
15. Likewise, APOC and CPC proceeded to interest arbitration this round over a single issue concerning staffing and displacement rights. A copy of the award issued between them by Arbitrator Michel Picher is at Tab 2 of CPC's Supplemental Book of Documents.
16. It is worth noting that these agreements were concluded in the context of the ongoing modernization of the Corporation's operations and the current economic situation facing the Corporation, which has necessitated its seeking changes to its collective agreements.
17. As is more fully discussed, below, CPAA, APOC and the Public Service Alliance of Canada ("PSAC") all concluded agreements with the Corporation this round, containing provisions for the institution of a Short Term Disability Program ("STDP"), which provides an integrated approach to income protection for employees in the event of illness or injury. As CUPW notes in its additional submissions, it has taken the position in the urban operations unit that it does not want to agree to the STDP; and, indeed, this was one of the most significant issues in the current round of bargaining between the parties for that unit.
18. CPC submits that the fact that CPAA, APOC and PSAC all freely agreed to STDP, while CUPW steadfastly refused to do so, is perhaps the most eloquent demonstration possible that employees in these units share no community of interest with members of the urban operations unit, and would lose their voice if they were ever represented by CUPW.

19. In so far as concerns bargaining for the RSMC collective agreement, the single issue that has delayed the conclusion of a collective agreement is CUPW's intransigent and, indeed, incomprehensible position on STDP.
20. Unlike employees in the urban operations unit, RSMCs currently have no sick leave protection whatsoever in their collective agreement. Their collective agreement is a unique one, based on the premise that long term stability, cost control and minimal change to the flexibility under which the former contractors worked were key issues. Also, as the Board knows from the proceedings to date in the file, another key issue was the maintenance of a separate bargaining unit for the RSMCs.
21. The parties achieved the desired cost control through the mechanism of the "financial cap" enshrined in article 35 of the RSMC collective agreement, which pre-determines the total cost of improvements to be made over the 8 year agreement, in the course of the three re-openers.
22. During this final re-opener round of bargaining, there are funds available in the financial cap sufficient to justify the institution of STDP for the RSMCs, a significant wage increase and other improvements to the terms and conditions of employment of the RSMCs. CPC offered just that – and CUPW has steadfastly refused to consider STDP for the RSMCs.
23. CUPW's unreasonable and completely incomprehensible position on STDP in the RSMC negotiations is clearly not motivated by any concern for the RSMCs' welfare. This is eloquently demonstrated by the position CUPW took in the mediation /arbitration process (and publicized to its members in a bulletin), to the effect that RSMCs would either receive 4 days of sick leave or the Corporation's STDP proposal, dependant on the outcome of the issue at the urban operation's table. A CUPW recently bulletin to its members is at Tab 3 of CPC's Supplemental Book of Documents.
24. The 4 days of sick leave is paltry in comparison to STDP – which would offer up to 30 weeks of income protection for ill employees plus 7 paid personal days that could be used for family issues,

time off, illnesses, appointments or to cover the STDP waiting period. CUPW's position on this issue cannot be motivated by any desire to improve the working conditions of the RSMCs.

25. CUPW's behaviour in bargaining with CPC for the RSMCs cannot possibly be any justification for a bargaining unit review.
26. CUPW also points to allegedly "identical questions" being discussed at both the urban and RSMC tables as evidence of a need for a single bargaining unit for all operational employees of the Corporation.
27. CPC states that it is simply not true that the same issues are being addressed at the two tables. Apart from STDP, there is very little overlap between the issues at the two tables.
28. Indeed, it is not surprising that the issues at the two tables are different. As noted in our original Response, the working conditions in the two units are very distinct, and it thus stands to reason that the issues in bargaining will be different.

***Postal Transformation***

29. CUPW also refers to the modernization of the Corporation's activities, claiming that its investment in infrastructure and the streamlining of the delivery of mail will "completely and radically change postal operations and will have important repercussions for employees of all bargaining units", which CUPW points to as a "rational" basis for regrouping those employees into one bargaining unit [our translation].
30. As pleaded in CPC's response, these claims are inaccurate and, indeed, misleading for the purposes of the Board's analysis on the threshold question. Quite simply, the Postal Transformation process will have a minimal impact on RSMCs and members of CPAA.
31. Very few RSMCs will receive sequenced mail. As is evident from the materials filed to date, the Corporation estimates only approximately 250 RSMCs (out of a total unit of approximately 7000) will receive such mail.

32. Moreover, CPC has confirmed to CUPW on multiple occasions that the receipt of sequenced mail will not affect the time estimates in the Route Management System ("RMS"), which is the tool that CPC utilises to estimate the time required to perform the work on RSMC routes. RMS is utilised, in part, to structure workload. As RMS will not be impacted by the Postal Transformation process, the process' impact on RSMCs will probably be quite minimal. Indeed, not a single RSMCs has been laid off as a result of Postal Transformation, and it is quite possible that none will ever be. In fact, the RSMC unit has grown in recent years, from 6934 positions at the end of 2009 to 7074 positions at the end of June this year.
33. It is simply out of an abundance of caution – and in an effort to provide full disclosure to CUPW – that CPC sent the notices and correspondence to CUPW that it has annexed to its additional submissions. What is clear from these letters is that only a very small number of RSMCs in a few locations might be impacted by Postal Transformation.
34. We, therefore, submit that CUPW's intimation that these letters are "just the tip of the iceberg" is entirely without foundation.
35. CUPW also alleges that the technological and other changes introduced by the Corporation will affect CPAA members. This is also inaccurate. As noted in our original Response, Postal Transformation will have a minimal impact on the members of the CPAA bargaining unit.
36. In its additional submissions, CUPW conflates hours reductions (which occur from time to time in the CPAA unit) and Postal Transformation. CPC has not announced a national program of hours reductions, however local hours adjustments, if and when they occur, are not related to do Postal Transformation and instead are a direct result of declining mail volumes and/or other retail components.
37. Any reduction of post office hours, if such reductions are to take place, will be implemented on a case by case basis in accordance with a well-established process of meaningful consultation with local CPAA officials, pursuant to the terms of the CPAA collective agreement. Typically, where reductions occur, only part time or term employees are impacted.

38. If CPAA members' hours are reduced, contrary to CUPW asserts, there will be no impact on RSMCs. Their work is not impacted by how many hours part time Postmasters or Assistants may work in an office nor by what hours these Postmasters work.
39. Thus, the potential of an hours reduction in CPAA office is a situation unique to CPAA, not the result of Postal Transformation and will not impact any other bargaining unit. Once again, this factor, as opposed to suggesting a need for a bargaining unit review, indeed indicates the converse, as the hours reduction – if it occurs- will not affect the RSMCs or the urban operations unit members.
40. Really, it is only in the urban operations unit that Postal Transformation is likely to have any noticeable impact.
41. It is ironic that CUPW's depiction of the allegedly negative impact of the Postal Transformation process- applicable only to the urban operations unit - is presented notwithstanding that CUPW has negotiated (and is currently applying) the technological change provisions contained in the urban operations unit collective agreement. These provisions that are robust and well in excess of those in the *Code*. Indeed, these provisions provide, among other benefits and protections, complete job security for impacted urban operations members.
42. Thus, the technological changes that CPC is making – and must make to remain economically viable – provide absolutely no reason for the Board to embark upon a review of CPC's bargaining structures. Indeed, if anything, the converse is true. Because these changes will impact really only the urban operations unit, this factor, once again, highlights the lack of community of interest between that unit and the others that CUPW is seeking to have merged with it.

***Health and Safety***

43. Finally, CUPW repeats its arguments that the decisions rendered relating to the composition of the Occupational Health and Safety Policy Committees are in some way evidence that the current

units are no longer appropriate for bargaining. In order to avoid committing the same repetition, CPC will simply refer the Board to its submissions on this issue in its original Response (paras 145-158) and add that the current challenges on this subject result mainly from CUPW's unwillingness to collaborate with other bargaining agents.

44. It should also be noted that the natural conclusion of CUPW's apparent desire to apply Part II of the *Code* to the letter would be the composition of one committee for all Canada Post employees.

***Conclusion***

45. CUPW has not raised a single novel argument in its additional submissions on the threshold question that the Board has asked the parties to address. Its burden of proof- to establish that the current units are no longer appropriate for collective bargaining- remains unmet.
46. It is undisputed that the working environments in the CPAA and RSMC units are distinct from the those in the urban operations unit. CUPW's attempt to project an image of conflict between the interests of the units is hollow in the face of an absence of jurisdictional disputes.
47. Similarly, CUPW's reference to "recent events"- be they related to modernization or the exercise of the right to strike or lockout- are nothing new for these sophisticated parties. The Board need only take notice of the long standing tradition of the evolving context of mail delivery through free collective bargaining to conclude that the current configuration of bargaining units is appropriate.
48. While one may infer from its submissions is that CUPW seeks to achieve greater bargaining strength through an expansion of its numbers; this is not what s. 18.1 of the *Code* was intended to address. In any event, the Board should not be persuaded by CUPW's submissions that simply adding numbers to a bargaining unit, regardless of community of interest and different working environments, produces better labour relations.
49. In fact, it is actually more likely to worsen those relations. One need only to take the example of the refusal of CUPW to accept the STDP offer for the RSMC's, who currently have no benefits in this regard. In lock-step bargaining, CUPW has taken the position on behalf of RSMC's that they

would get "whatever is decided" at the urban operations table, even if that means RSMC's will end up with benefits inferior to those (STDP) that they could have obtained, which benefits were voluntarily accepted by every other bargaining agent at the Corporation. This is not the type of "promotion of the common well-being" through free collective bargaining that is contemplated in the Preamble of the Code.

50. For all of these reasons, and those already submitted in its Response, the Corporation submits that the Board should dismiss the present Application without a hearing as CUPW has clearly not met either its factual or legal burden relating to the threshold question that the Board must consider.
51. Should the Board not summarily dismiss the Application on the basis set out above, CPC requests that a full hearing into the issues relating to the threshold question be held wherein CPC reserves its rights to adduce additional evidence and argument in response to CUPW's allegations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of July, 2011



Mary J. Gleason