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BY EMAIL

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Dear Sir/Madam:

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and an application involving a question respecting the application of section 87.4(1), filed pursuant to section 87.4(4) thereof by the Amalgamated Transit Union, Local 0591, applicant; Société de transport de l'Outaouais, employer. (31786-C)

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and an application involving a question respecting the application of section 87.4(1), filed pursuant to section 87.4(4) thereof by the Société de transport de l'Outaouais, applicant; Amalgamated Transit Union, Local 0591, bargaining agent. (31800-C)

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. André Lecavalier and Gaétan Ménard, Members, has considered the above-noted applications.

I. Nature of the Applications

This involves two applications submitted under section 87.4(4) of the *Canada Labour Code (Part I—Industrial Relations)* (the *Code*) which raise a question about the application of section 87.4(1) of the *Code*. The first application (file no. 31786-C) was filed by the Amalgamated Transit Union, Local 0591 (the union) on September 15, 2016. The union represents the bus drivers and mechanics of the Société de transport de l'Outaouais (the employer or STO) (order no. 5802-U). The union is asking the following of the Board:

We are hereby asking the Canada Industrial Relations Board to issue an order declaring that no activity, supply of services, operation of facilities or production of goods by the Société de transport de l'Outaouais is necessary to prevent an immediate and serious danger to the safety or health of the public within the meaning of section 87.4(1) of the *Canada Labour Code*.

(translation)

The second application (file no. 31800-C) was filed with the Board on September 22, 2016, by the STO. The employer is asking the Board to issue an order that would allow the maintenance of activities during peak hours, namely:

- The maintenance of regular services and integrated school services across the entire territory served by the Société de transport de l'Outaouais at the following times: from 6:00 a.m. to 9:00 a.m., and from 2:30 p.m. to 6:00 p.m., Monday to Friday;
- The maintenance of bus maintenance services to ensure that service during the periods established by the Board can be provided in accordance with normal safety standards and ensure a number of busses that enable the maintenance of the service ordered.

(translation)

Given the priority that the Board places on applications of this nature, and given the fact that the Board must first decide all questions related to the application of section 87.4(1) of the *Code* when seized of such an application—before an employer can declare a lock-out or the union can call a strike—the Board considers that it is important to rapidly inform the parties of its decision.

Accordingly, a bottom-line decision is issued as follows, and reasons will be prepared and provided to the parties as soon as possible.

Thus, in the present matter, the Board must determine whether the employer, the union and the employees covered by the bargaining unit fulfill their duty under the *Code* to continue the supply of services and operation of facilities to the extent necessary to prevent an immediate and serious danger to the safety or health of the public. In the present matter, the onus is on the employer to demonstrate that it is necessary for the Board to issue an order for the maintenance of certain activities.

In the present case, the employer's application to continue certain activities during a potential strike declared by the union relies on testimony provided at the hearing, namely, that of three experts. These expert witnesses are: Mr. Jean Hamaoui, Director, Traffic Management and

Transportation Planning Services for Stantec; Dr. Stéphane Perron, physician responsible for public health with the Montréal Public Health Department; and Dr. Stéphane Bouchard, Psychologist and Professor, Université du Québec en Outaouais.

The employer argues, among other things, that in case of a strike, and in the absence of the services of the employees involved, the response time for ambulance services and firefighters will be affected to the extent that the health and safety of the public will be in danger.

The union called as witnesses Mr. Stéphane Noël, President of the Association des pompiers de Gatineau, and Mr. Marc Paquette, bus driver for STO and union president since 2003.

II. Decision

Section 87.4 of the *Code* came into effect on January 1, 1999. It reads as follows:

87.4 (1) During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.

(2) An employer or a trade union may, no later than fifteen days after notice to bargain collectively has been given, give notice to the other party specifying the supply of services, operation of facilities or production of goods that, in its opinion, must be continued in the event of a strike or a lockout in order to comply with subsection (1) and the approximate number of employees in the bargaining unit that, in its opinion, would be required for that purpose.

(3) Where, after the notice referred to in subsection (2) has been given, the trade union and the employer enter into an agreement with respect to compliance with subsection (1), either party may file a copy of the agreement with the Board. When the agreement is filed, it has the same effect as an order of the Board.

(4) Where, after the notice referred to in subsection (2) has been given, the trade union and the employer do not enter into an agreement, the Board shall, on application made by either party no later than fifteen days after notice of dispute has been given, determine any question with respect to the application of subsection (1).

(5) At any time after notice of dispute has been given, the Minister may refer to the Board any question with respect to the application of subsection (1) or any question with respect to whether an agreement entered into by the parties is sufficient to ensure that subsection (1) is complied with.

(6) Where the Board, on application pursuant to subsection (4) or referral pursuant to subsection (5), is of the opinion that a strike or lockout could pose an immediate and serious danger to the safety or health of the public, the Board, after providing the parties an opportunity to agree, may, by order,

(a) designate the supply of those services, the operation of those facilities and the production of those goods that it considers necessary to continue in order to prevent an immediate and serious danger to the safety or health of the public;

(b) specify the manner and extent to which the employer, the trade union and the employees in the bargaining unit must continue that supply, operation and production; and

(c) impose any measure that it considers appropriate for carrying out the requirements of this section.

(7) On application by the employer or the trade union, or on referral by the Minister, during a strike or lockout not prohibited by this Part, the Board may, where in the Board's opinion the circumstances warrant, review and confirm, amend or cancel an agreement entered into, or a determination or order made, under this section and make any orders that it considers appropriate in the circumstances.

(8) Where the Board is satisfied that the level of activity to be continued in compliance with subsection (1) renders ineffective the exercise of the right to strike or lockout, the Board may, on application by the employer or the trade union, direct a binding method of resolving the issues in dispute between the parties for the purpose of ensuring settlement of a dispute.

Section 87.4 is aimed specifically at preventing an immediate and serious danger to the safety or health of the public. The section does not give the Board jurisdiction to deal with other matters in the public's interest that might be impacted by a labour dispute.

The Board is mindful that it carries out dual responsibilities when it is seized of a question concerning the maintenance of certain activities pursuant to section 87.4 of the *Code*. It must consider the public's right to protection against a danger to its safety or health while bearing in mind the preamble to the *Code*, which describes the Parliament of Canada's commitment to the practice of free collective bargaining.

In light of the evidence and the testimony heard, the Board is not satisfied that in the event of a strike declared by the union and its members or a lock-out declared by the employer, it is necessary to issue an order for the maintenance of certain activities or supply of services to prevent an immediate and serious danger to the health and safety of the public.

In light of the above, the Board grants the union's application and dismisses the employer's application.

Notwithstanding this conclusion, if a work stoppage does occur, the Minister, the employer or the union may apply again to the Board, this time pursuant to section 87.4(7) of the *Code*, to have it review and confirm, amend or cancel a decision if it considers that such action is warranted in the circumstances.

This is a unanimous decision of the Board, and it is signed on its behalf by

Translation

Louise Fecteau
Vice-Chairperson

c.c.: Mr. Jesse Peters (CIRB-NCR)