

Canada Industrial Relations Board



Conseil canadien des relations industrielles

1 Front Street West, Suite 5300, Toronto, Ont. M5J 2X7  
1, rue Front Ouest, bureau 5300, Toronto (Ont.) M5J 2X7  
Fax/Télécopieur: 416-973-6543

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**Our File: 28402-C**

Document No.: 281794

October 5, 2010

**BY TELECOPIER**

Fasken Martineau DuMoulin LLP  
Stock Exchange Tower  
Suite 3400  
800 Place Victoria  
Montreal, Quebec  
H4Z 1E9                      **514-397-7600**

Attention: Ms. Louise Béchamp  
Mr. Ronald J. McRobie

Heenan Blaikie LLP  
Lawyers  
Suite 2500  
1250 René-Lévesque Blvd. West  
Montréal, Quebec  
H3B 4Y1                      **514-921-1271**

Attention: Mr. Guy Tremblay

Air Canada  
Air Canada Centre  
Law Branch zip 1276  
P.O. Box 7000, Station Airport  
Dorval, Quebec  
H4Y 1J2                      **514-422-2641**

Attention: Mr. Fred Headon  
Senior counsel, Labour & Employment Law

**Canada**

Sirs/Madam:

In the matter of the *Canada Labour Code (Part I - Industrial Relations)* and an application for declaration of a single employer filed pursuant to section 35 of the *Code* concerning the International Association of Machinists and Aerospace Workers; International Association of Machinists and Aerospace Workers, Transportation District 140, applicants; Aveos Fleet Performance Inc., Aveos Holding Company, Air Canada, respondents.

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Enclosed please find a redacted copy of the above-cited application which was filed with the Canada Industrial Relations Board on October 1, 2010.

**Please read the following instructions carefully:**

1. **Notice to Employees and Certificate of Posting**

You are hereby directed by the Board to immediately post the enclosed **NOTICE TO EMPLOYEES** in a conspicuous place or places where it is most likely to come to the attention of the employees who may be affected by this application. We are enclosing for this purpose copies of the notice; additional copies are available on request.

At the time of the posting, the authorized representative of the employer should complete the bottom portion of the Notice by indicating the date of posting, his/her name and title.

The Notice should continue to be displayed for a period of **SEVEN (7) days**, and at the end of this period, the employer is required to complete and return the enclosed **CERTIFICATE OF POSTING**.

2. **Exchange of Documents**

Please note that in accordance with section 23 of the Board's *Regulations*, you are required to serve on the other concerned parties a copy of any response or other documents you file with the Board, and to advise the undersigned **in writing of the time and manner of service**. Please refer to the attached list for the names and addresses of the other concerned parties in this case. This requirement does not apply to confidential documents that could reveal the wishes of the employees or other documents that the Board declares to be confidential, pursuant to sections 22 and 35 of the Board's *Regulations*.

3. **Employer's Response to the Application**

Your attention is directed to sections 9, 12 and 13 of the, *Canada Industrial Relations Board Regulations, 2001*, which outline criteria that must be met in order to file a response to the

application. If you wish to file a response, you must do so within **fifteen (15) days** of receipt of this letter. The applicant will then have **ten (10) days** to reply.

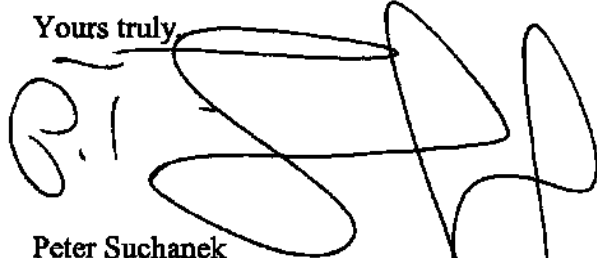
Please note that any information given to the undersigned regarding your position in this matter does not constitute a response.

5.. **Hearings**

This will confirm that the Board has set aside the afternoon of **Friday, November 5, 2010**, to deal with any remaining disclosure issues and to receive a status report from the parties. Details of the logistics for this hearing will be communicated to the parties in due course. Please be advised that hearings with respect to this matter and Board file no. 28234-C will take place at the Board's offices in Ottawa on **November 22, 23 and 29, 2010** and, if required, on December 20-23, 2010.

If you have any questions concerning this matter, please contact the undersigned in our Toronto office at 416-973-3783.

Yours truly

A handwritten signature in black ink, appearing to read 'P. Suchanek', written over a horizontal line.

Peter Suchanek  
Regional Director (Registrar)- Ontario Region

Encl.

Canada Industrial Relations Board

File No. 28402-C

**CERTIFICATE OF POSTING**

In connection with the application for Single employer, by International Association of Machinists and Aerospace Workers and International Association of Machinists and Aerospace Workers, District lodge 140, applicants, in respect of employees of Aveos Fleet Performance Inc. Aveos Holding Company and Air Canada, employers, I hereby certify that I am the

\_\_\_\_\_  
 (Please print name & title)

and that I have posted and kept posted for a period of seven (7) full and complete days a copy of the NOTICE TO EMPLOYEES in the following conspicuous place(s) in the employer's establishment(s) where they were most likely to come to the attention of the employees who could be affected by the application, namely:

**Name of establishment  
and location(s)**  
 \_\_\_\_\_

**Date of posting**

(Attach list if space is not sufficient)

**Date posting was taken down:** \_\_\_\_\_

**Date** \_\_\_\_\_ **Signature** \_\_\_\_\_

THIS REPORT OF POSTING TO BE COMPLETED SEVEN (7) DAYS AFTER POSTING OF NOTICE AND MAILED TO:

**REGISTRAR  
 Canada Industrial Relations Board  
 1 Front Street West  
 Suite 5300  
 5th Floor  
 Toronto Ontario  
 M5J 2X7**

# Canada Industrial Relations Board

File No(s) 28402-C

## NOTICE TO EMPLOYEES

**TAKE NOTICE THAT** International Association of Machinists and Aerospace Workers and International Association of Machinists and Aerospace Workers, District Lodge 140 (Applicants) has on October 1, 2010 filed with the Canada Industrial Relations Board an application (copy attached hereto) for Single employer in respect of employees of Aveos Fleet Performance Inc, Aveos Holding Company and Air Canada

(In accordance with the usual procedures, the Board has appointed an Officer to investigate this application.)  
To be deleted for notices of reconsideration applications.

**ANYTHING YOU WISH THE BOARD TO KNOW IN RESPECT OF THIS APPLICATION, AS WELL AS ANY REQUEST TO INTERVENE, SHOULD BE SENT BY FAX OR REGISTERED MAIL OR DELIVERED TO THE ADDRESS SHOWN BELOW NOT LATER THAN FIFTEEN (15) DAYS !\$ (TEN (10) DAYS IF EXPEDITED PROCESS) FROM THE POSTING OF THIS NOTICE IN ACCORDANCE WITH SECTIONS 9, 12 and 13 OF THE BOARD'S REGULATIONS.**

**YOU SHOULD BE AWARE THAT, REGARDLESS OF ITS FORM, ANY DOCUMENT SENT TO THE BOARD WHICH DEALS ONLY WITH EMPLOYEE(S) WISHES TO BE REPRESENTED OR NOT TO BE REPRESENTED BY A TRADE UNION, WHILE IT WILL BE INVESTIGATED AND CONSIDERED BY THE BOARD, WILL BE KEPT CONFIDENTIAL IN ACCORDANCE WITH SECTION 35 OF THE BOARD'S REGULATIONS.**

THE FOLLOWING EXCERPTS FROM THE Canada Industrial Relations Board Regulations, 2001 ARE APPLICABLE:

### SIGNATURES AND AUTHORIZATIONS

6.(1) An application, response, reply or request to intervene filed with the Board shall be signed as follows:

(a) if it is filed by a trade union, a council of trade unions, or an employers' organization, it shall be signed by the president or secretary or two other officers or by any individual authorized by the trade union, the council of trade unions or employers' organization;

(b) if it is filed by an employer, it shall be signed by the employer or by the general manager or chief executive officer or by any individual authorized by the employer; and

(c) if it is filed by an employee, it shall be signed by the employee or by any individual authorized by the employee.

(2) For the purpose of subsection (1), the Board may require that an authorization be given in writing and filed with the Board.

### NOTICES OF APPLICATION

11.(1) Subject to subsection (2), the Board shall, on receipt of an application and to the extent possible, give notice of the application in writing to a person whose rights may be directly affected by the application.

(2) If the rights of employees could be affected by an application, the Board may, in writing, require an employer or a trade union to do one or both of the following:

(a) immediately post any notices of the application that are provided by the Board, for the reasonable period that it prescribes, in places where those notices are most likely to come to the attention of the employees who may be affected by the application; and

(b) notify the employees who may be affected by the application by any other means set by the Board that ensures that they receive effective notice of the application.

(3) An employer or a trade union, as the case may be, must provide written confirmation to the Board that it has complied with any requirement prescribed in subsection (2).

(4) The date on which the employees are deemed to have received notice of the application is the earliest of

(a) the day on which the employees are given notice by the Board of the application under subsection (1);

(b) the day on which the notice is posted under paragraph (2)(a); and

(c) the day on which the employees are notified of the application under paragraph (2)(b).

### RESPONSES, REPLIES AND REQUESTS TO INTERVENE

12.(1) In addition to the information required for an application made under section 10, any person who makes a response, reply or request to intervene must do so in writing and include the following information:

(a) the Board's file number for the relevant application;

(b) full particulars of the facts, relevant dates and grounds for the response, reply or request to intervene;

(c) a copy of supporting documents for the response, reply or request to intervene; and

(d) the person's position with respect to the order or decision sought by the applicant or respondent, as the case may be.

(2) A request to intervene shall also state

(a) the person's interest in the matter; and

(b) how the intervention will assist the Board in furthering the objectives of the Code.

### TIME FOR RESPONDING, REPLYING OR INTERVENING

13. (1) A response or a request to intervene to a proceeding must be filed

(a) in the case of an application for certification, within 10 days after receiving notice of the application; or

(b) in the case of any other application, within 15 days after receiving notice of the application.

(2) A reply must be filed within 10 days of the filing of the response.

(3) A response to a request to intervene must be filed within 10 days of the filing of the request to intervene.

(4) A request for an extension of time to respond, reply or request to intervene must be made in writing, setting out the grounds for the requested extension.

### HEARINGS

10(g) whether a hearing is being requested, and if so, the reasons for the request.

### NOTICE OF HEARING

28. Subject to the provisions of subsection 15(2) respecting an expedited process, the Board must give not less than 15 days notice of a hearing to the parties, unless the parties consent to a shorter notice.

47(2) If a party does not attend a hearing after having been given notice, the Board may decide the matter in the party's absence.

### CONFIDENTIALITY OF EMPLOYEES' WISHES

35. The Board shall not disclose to anyone evidence that could, reveal membership in a trade union, opposition to the certification of a trade union or the wish of any employee to be represented by or not to be represented by a trade union, unless the disclosure would be in furtherance of the objectives of the Code.

Signed \_\_\_\_\_

REGISTRAR, Canada Industrial Relations Board  
Canada Industrial Relations Board  
1 Front Street West  
Suite 5300  
5th Floor  
Toronto Ontario  
M5J 2X7

Telephone: 416-973-3783  
Fax: 416-973-6543

As directed by the Canada Industrial Relations Board, this notice was posted by me on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_

(To be completed at the time the notice is posted)

**CAVALLUZZO HAYES SHILTON  
MCINTYRE & CORNISH LLP**

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BARRISTERS SOLICITORS

474 Bathurst Street  
Suite 300  
Toronto, Ontario M5T 2S6  
Telephone: 416-964-1115  
Facsimile: 416-964-5895  
Email: [contactus@cavalluzzo.com](mailto:contactus@cavalluzzo.com)  
Website: [www.cavalluzzo.com](http://www.cavalluzzo.com)

**In Association with Patrice Band**

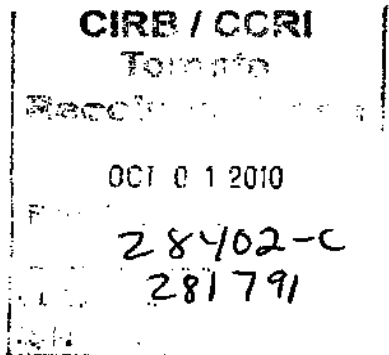
Please refer to:  
Direct Line:  
Email:  
Assistant:  
Assistant's Email:  
File No.:

**Amanda Pask**  
416-964-5506  
[apask@cavalluzzo.com](mailto:apask@cavalluzzo.com)  
Alison Newton  
[Anewton@cavalluzzo.com](mailto:Anewton@cavalluzzo.com)  
101331

October 1, 2010

**SENT VIA FACSIMILE TO: 416-973-6543**

Peter Suchanek  
Canada Industrial Relations Board  
1 Front Street West, Suite 5300  
Toronto, ON M5J 2X7



**In the matter of the Canada Labour Code (Part I - Industrial Relations) and an application filed pursuant to section 35 by the International Association of Machinists and Aerospace Workers (applicants); Aveos Fleet Performance Inc., Aveos Holding Company and Air Canada, (respondents)**

We enclose herewith an application made pursuant to Section 35.

This application relates directly to the Joint Application presently before the panel in Board File No. 28234-C which is scheduled for next week. We ask that this application be brought promptly to the attention of the panel. We request that this application be consolidated with Board File No. 28234-C.

We have served this application by facsimile and by e-mail upon counsel for Air Canada and Aveos.

2

We request that the Board provide counsel with notice of the application immediately.

Yours very truly,

**CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH LLP**



Amanda Pask  
AP/an

Encls.

cc Ronald J. McRobie and Louise Béchamp (Fasken Martineau, counsel for Aveos)  
Guy Tremblay (Heenan Blaikie, counsel for Air Canada)  
Dave Ritchie (IAMAW)  
Chuck Atkinson (IAMAW DL 140)

**CANADA INDUSTRIAL RELATIONS BOARD**

**BETWEEN**

**INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS**

**Applicant**

**- and -**

**AIR CANADA, AVEOS FLEET PERFORMANCE INC AND AVEOS HOLDING  
COMPANY**

**Respondents**

**APPLICATION UNDER SECTION 35 OF THE CODE  
BY THE  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS**

**October 1, 2010**

**CAVALLUZZO HAYES SHILTON  
MCINTYRE & CORNISH LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto ON M5T 2S6**

**James Hayes  
Amanda Pask**

**Tel: (416) 964-1115  
Fax: (416) 964-5895**

**Counsel for the IAMAW**



**I. The Applicants are:****a. International Association of Machinists and Aerospace Workers**

15 Gervais Drive - 7<sup>th</sup> Floor  
Toronto, Ontario  
M3C 1Y8

**Attention: Mr. Dave Ritchie, General Vice-President, Canada**

Telephone: (416) 386-1789  
Fax: (416) 386-0210

**b. International Association of Machinists and Aerospace Workers, District Lodge 140**

2580 Drew Road, Suite 203  
Mississauga, Ontario  
L4T 3M5

**Attention: Mr. Chuck Atkinson, President and Directing General Chairperson**

Telephone: (905) 671-3192  
Fax: (905) 671-2114

**BOTH PARTIES REPRESENTED HEREIN BY:**

Cavalluzzo Hayes Shilton McIntyre & Cornish LLP  
474 Bathurst Street, Suite 300  
Toronto, Ontario  
M5T 2S6

**Attention Mr. James Hayes and Ms. Amanda Pask**

Telephone: (416) 964-1115  
Fax: (416) 964-5895

**ii. The Respondents are:**

- a. **Aveos Fleet Performance Inc.**  
**(Formerly ACTS Aero Technical Support and Services Inc.)**  
2311 Alfred-Nobel Blvd.  
BAN 3 - ZIP 8062  
Saint-Laurent, Québec H2S 2B6

**Attention: Mtre Nicolas Vanasse - Vice-President, Chief Legal Officer and Corporate Secretary**

Telephone: (514) 856-7449  
Fax: (514) 856-7458

- b. **Aveos Holding Company**  
2311 Alfred-Nobel Blvd.  
BAN 3 - ZIP 8062  
Saint-Laurent, Québec H2S 2B6

**Attention: Mtre Nicolas Vanasse - Vice-President, Chief Legal Officer and Corporate Secretary**

Telephone: (514) 856-7449  
Fax: (514) 856-7458

**REPRESENTED HEREIN by:**

Fasken Martineau DuMoulin, LLP  
Stock Exchange Tower, Suite 3700  
P.O. Box 242, 800 Place-Victoria  
Montréal, Québec H4Z 1E9

**Attention: Mtre Ronald J. McRoble**

Telephone: (514) 397-7511  
Fax: (514) 397-7600

**Attention: Mtre Louise Béchamp**

Telephone: (514) 397-7573  
Fax: (514) 397-7600

**c. Air Canada**

Law Branch - Air Canada Centre  
ZIP 1276 - P.O. Box 7000, Station Airport  
730 Côte-Vertu West  
Dorval, Quebec H4Y 1C2

**Attention: Mtre Fred Headon - Senior Counsel, Labour & Employment  
Law**

REPRESENTED HEREIN by:

Heenan Blaikie  
1250 René-Lévesque Blvd. West  
Suite 2500  
Montreal, Québec  
H3B 4Y1

**Attention: Mtre Guy Tremblay**

Telephone: (514) 846-2271  
Fax: (514) 921-1271

**CANADA INDUSTRIAL RELATIONS BOARD**

**BETWEEN**

**INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS**

**Applicant**

**- and -**

**AIR CANADA, AVEOS FLEET PERFORMANCE INC AND AVEOS HOLDING  
COMPANY**

**Respondents**

**APPLICATION UNDER SECTION 35 OF THE CODE  
BY THE  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS**

**October 1, 2010**

**CAVALLUZZO HAYES SHILTON  
MCINTYRE & CORNISH LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto ON M5T 2S6**

**James Hayes  
Amanda Pask**

**Tel: (416) 964-1115  
Fax: (416) 964-5895**

**Counsel for the IAMAW**

**FACTS AND GROUNDS SUPPORTING  
APPLICATION UNDER SECTION 35 OF THE CODE**

1. This application has been filed in order to ensure that the Board has before it all the information and submissions necessary to issue an order that accords with current labour relations realities and that will result in the recognition of an appropriate bargaining unit in relation to the business currently being carried out by Aveos Fleet Performance Inc.
2. The IAMAW requests that this application be consolidated and heard together with Board File No. 28234-C, a joint application brought by Air Canada and Aveos Fleet Performance Inc., ("the Joint Application") which is currently before the Board. The employer Joint Application requests the severance of the existing bargaining units in relation to Air Canada and Aveos, which have at all times to the present functioned as common employers.
3. This application is to be read in conjunction with all materials before the Board in Board File No. 28234-C. The IAMAW relies on all the material it has filed in that matter setting out the unique history of the issues before the Board and the relationship between the corporate parties.
4. The Board has been fully apprised as to the reasons why this application is being filed at this time – in submissions made previously, both in verbally and in writing, in the conduct to date of the Joint Application.
5. The union sought to satisfy what it perceives to be its legal due diligence and moral obligations to its members without reaching premature conclusions in any respect until it became plainly necessary to do so. The IAMAW had, what it believed to be, appropriate regard to the potential economic harm to Air Canada and Aveos which could be expected to flow from litigation of this significance.
6. In the absence of cooperation from the companies and in light of today's order from the Board in Board File No. 28234-C, that day has now arrived. The union is compelled to proceed on the basis of the information and advice that it has received to date – and to advise its members as to that conclusion.
7. It is the submission of the IAMAW in both applications that, in the current circumstances, the only bargaining unit that is appropriate is one that names both Aveos and Air Canada as employers of the employees carrying out functions that previously were

carried out by ACTS LP, and which fall within the parameters of the IAMAW's bargaining units at Air Canada<sup>1</sup>.

8. The position of the IAMAW is that this issue is already properly before the Board in the Joint Application. Lest there be any doubt however, this application is filed to ensure that any Board certificates that may be issued reflect current realities, which are the product of events that have occurred over the last two years. Aveos and Air Canada have faced extreme economic pressures since early 2009, which brought both of them to the point of insolvency or potential insolvency in the case of Air Canada. That pressure resulted in significant changes to their relationship and to their business prospects.

9. Through this application the IAMAW requests that the Board resolve the issues in Board File No. 28234-C and in this application by declining Air Canada and Aveos's application to sever the existing bargaining unit and by issuing certificates for bargaining that reflect the fact that the current relationship between Aveos and Air Canada continues to be that of a single employer for all labour relations purposes.

10. On the basis of all of the information and material available to it at the present time the IAMAW has reached conclusions that:

- i) Aveos and Air Canada form a single employer for all labour relations purposes;
- ii) Aveos Fleet is not a viable business entity in its current form. It avoided liquidation after January 2009, and avoids it now, only due to its utility to Air Canada;
- iii) neither Aveos Fleet nor Air Canada have any interest or intention of performing the airframe or heavy maintenance work provided by two-thirds of the IAMAW members affected by the Companies' Joint Application (approximately 2000 people);
- iv) Air Canada is seeking to evade its current contractual obligation to carry out its airframe work using the members of the IAMAW bargaining unit;
- v) Air Canada is seeking to unload the severance, pension and other liabilities that it owes or will owe to IAMAW members;
- vi) Air Canada plans to transfer those liabilities to Aveos by effecting a split of the IAMAW bargaining units;

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<sup>1</sup> In this application "Aveos" refers to the Aveos Group, including both Aveos Fleet Performance Inc. and Aveos Holding Company, while "Aveos Fleet" refers to Aveos Fleet Performance Inc. alone.

- vii) The recent restructuring reduces Aveos to a vehicle to effect the transfer of liabilities and obligations from Air Canada, such that the 'restructuring plan' amounts to a scheme to defeat bargaining and bargained rights under the Code;
- viii) An insolvency and liquidation of Aveos Fleet is absolutely foreseeable in the short term in the event that the Board agrees to divide the unit;
- ix) The opinion of the IAMAW is that the lenders and Air Canada are positioned under the terms of the restructuring so that they would suffer no loss, and may in fact benefit, from the insolvency of Aveos Fleet (the basis of this conclusion will be set out in a confidential section).
- ix) Such an insolvency would unquestionably leave thousands of IAMAW members in utter ruin should the bargaining units be split by the CIRB deeming Aveos to be a distinct employer from Air Canada.

11. The IAMAW also states that Air Canada and Aveos Fleet are in breach of significant contractual commitments which were made to the union dated June 9 2009 during the Air Canada restructuring and in the course of the 2009 extension collective bargaining with Air Canada. Those negotiations resulted in amendments to the Transition MOA, which is part of the Board's order of January 22, 2009.

12. Those obligations include express undertakings that the Companies would communicate the specifics of a viable plan to restructure Aveos's business to the IAMAW leadership and their advisers; that they would provide ongoing disclosure concerning the financial situation of Aveos and that they would not proceed to the Board to obtain a split unit until Aveos Fleet had adopted a viable plan to restructure its business.

13. The IAMAW has since concluded that Air Canada and Aveos acted in bad faith in a manner which directly involved both the CIRB and the union as early as January, 2009.

14. A video conference hearing was held with the Board on January 21, 2009 which was followed immediately by a decision of the Board adopting a Transition MOA which had been executed on January 8, 2009. Neither Air Canada nor Aveos advised either the IAMAW or the Board that Aveos had already gone into default. It was insolvent at that time.

15. In the circumstances, where these companies have apparently: i) misled both the Board and the union ii) failed to produce the business plan that is integral to the "plan to restructure the business of Aveos"; iii) failed to produce financial information of vital importance to the union expert which has already been provided to its lenders, and; iv) opposed production of said information in the context of the Joint Application, the IAMAW is compelled to reach the only plausible conclusion. Aveos remains a creature of Air Canada. Aveos will be permitted to continue only for so long as it serves Air Canada's

purpose. The Joint Application is seen as a possible legal device to split the current IAMAW bargaining units for the purpose of off-loading significant Air Canada liabilities and contractual obligations owed to approximately three thousand employees.

16. The IAMAW makes these statements on the basis of information which is available to all members of the public and on the basis of the incomplete disclosure which has been made to date.

17. The IAMAW relies upon the Board to conduct a fair and open hearing with respect to the instant application and will rely upon well established caselaw in support of its demand that Air Canada and Aveos meet this single employer allegation with the production required by law.

## **Background**

### **I. THE PARTIES**

#### **International Association of Machinists & Aerospace Workers**

1. This application and Board File No. 28234-C concerns two bargaining units at Air Canada for which the IAMAW is the certified bargaining agent. One unit covers employees performing technical, maintenance and operational support functions (the TMOS Unit). The other covers employees performing office clerical and administrative services.

#### **The Clerical Unit**

The IAMAW is certified under CIRB Order 9098-U for a unit of:

All employees of Air Canada performing office, clerical and administrative support functions, including discrete units within Air Canada primarily performing such functions, and including customer relations functions when performed incidental to office, clerical and administrative support functions, but excluding employees performing such functions when directly and primarily related to customer sales and service functions or when performed in discrete units within Air Canada primarily performing customer sales and service functions; also excluding any persons performing management functions or employed in a confidential capacity in matters relating to industrial relations as required by the Canada Labour Code and any employees already covered by a Certification order.



## **The TMOS Unit**

The IAMAW is certified to represent the following bargaining unit pursuant to CIRB Order No. 9085-U issued April 21, 2006, amending Order No. 9061-U:

All employees of Air Canada, ACTS Limited Partnership, AC Cargo Limited Partnership and ACGHS Limited Partnership engaged in technical, maintenance and operational support 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.

2. This certificate was issued following an agreement to resolve a common employer application filed by the IAMAW following the creation of ACTS LP, AC Cargo LP and ACGHS LP as distinct corporate entities.
3. That common employer application came about in the context of various corporate changes at Air Canada in recent years. Each of the entities named on the TMOS certificate performed work using members of the IAMAW that corresponded to work previously performed by an internal division of Air Canada.

## **Air Canada Cargo Services and Air Canada Ground Handling Services**

4. AC Cargo provided cargo services to Air Canada on domestic and transborder routes, as well as support and direction to Air Canada international cargo operations as a contracted service to Air Canada. ACGHS provided ground handling services to Air Canada, as well as other airlines. The services provided by ACGHS include passenger check in, gate management, baggage and cargo handling and processing, and aircraft ramp services.
5. Upon completion of the CCAA restructuring process on September 30, 2004, AC Cargo and ACGHS emerged as a separate legal entities under ACE Aviation in the form of partnerships.
6. The common employer application that resulted in the current certificate was filed during this period.
7. In 2006 ACE proceeded with a reorganization of its corporate structure. Pursuant to this reorganization, the partnership interests, as well as all the interests in the general partners of ACGHS Limited Partnership and AC Cargo Limited Partnership were transferred to Air Canada directly.

8. More recently, AC Cargo and ACGHS have been reabsorbed into Air Canada and once again operate as internal divisions.

#### **ACTS LP**

9. ACTS performed Maintenance, Repair and Overhaul services for Air Canada's fleet, as well as providing maintenance services to airlines other than Air Canada.

21. Air Canada first announced the formation of Air Canada Technical Services in November, 2000, as "a new organization within Air Canada that will capitalize on the Corporation's ability to compete on a global basis as a maintenance, repair and overhaul profit centre." At that time, Air Canada Technical Services remained an internal division of Air Canada with no separate legal identity.

22. During the period from November 2000 to September 2004, Air Canada continued to pursue a business strategy of segmentation of its internal operations and in July 2002 ACTS became a distinct legal entity under the ownership of Air Canada.

23. Upon completion of the CCAA restructuring process on September 30, 2004, ACTS, along with AC Cargo and ACGHS emerged as a separate legal entity under the ownership of ACE Aviation performing maintenance, repair and overhaul services for Air Canada's fleet, as well as providing maintenance services to airlines other than Air Canada.

24. ACTS responsibilities were the maintenance, engineering, repair, supply and purchasing to support the Air Canada fleet, total technical services for third parties in five maintenance categories: airframes, engines, components, line and aircraft cabins. Line maintenance functions remained directly with Air Canada.

25. In 2005 the IAMAW filed the section 35 application with the Canada Industrial Relations Board in relation to Air Canada, ACTS LP, Air Canada Cargo and Air Canada Ground Handling Services that ultimately led to the current certificate for the TMOS Unit.

26. In December 2006 ACTS LP acquired an 80% interest in Aeroman, a maintenance, repair and overhaul company based in El Salvador.

27. On October 16, 2007, a transaction was concluded in which the assets and business carried on by ACTS LP (including its interest in Aeroman) was sold by ACE Aviation to a consortium consisting of Sageview Capital, and KKR Private Equity Investors for approximately \$700M, with ACE Aviation retaining a 23% ownership stake.

#### **Aveos Fleet Performance Inc. & Aveos Holding Company**

28. Following the above transaction the business of ACTS LP continued under the name ACTS until September 23, 2008, at which time it was rebranded as Aveos Fleet

Performance Inc. Aveos Fleet is therefore the corporate entity currently carrying out the business previously carried out by ACTS LP.

29. Aveos Holding Company is the ultimate parent company of Aveos Fleet and others, including Aeroman.

## **II Background Facts**

30. At all times since July of 2002, when Air Canada transformed its internal maintenance division into a distinct corporate entity, and up to the present date, Air Canada and ACTS/Aveos have functioned as a single employer, with employees unionized with the IAMAW employed by Air Canada and seconded to ACTS/Aveos. The current secondment agreement between Air Canada and ACTS/Aveos has been in place since September 24, 2004.

### **History before the Board**

31. The issues relevant to this matter first came before the Board through a complaint filed by the IAMAW pursuant to sections 97(1) and 94(1)(a) of the Code in Board File No. 26054-C, alleging failures to disclose to the IAMAW in a timely and appropriate manner plans to sell all or part of ACTS to third party investors.

32. An interim agreement was reached in that file, under which documents pertaining the planned sale were disclosed to the Union and an agreement was reached between the parties to protect employment rights pending discussions between the parties concerning the sale of ACTS and its labour relations consequences (the "Discussion Period Agreement").

33. After the conclusion of the agreement of purchase and sale on October 16, 2007 the parties continued to meet under the Discussion Period Agreement with the assistance of the Board. In October of 2008 the parties were close to finalizing an agreement as to the steps that the parties would take in the event that the CIRB issued a decision severing the bargaining units in the wake of the changes in the ownership structure.

34. At that time, however, Aveos came forward and requested that the transition discussions be temporarily put on hold as a result of what it described as cash flow problems. The Board was advised in early December of this development in the course of a case management conference.

35. After Aveos's request to put the discussions on hold, the Union requested and received certain financial disclosure from Aveos, including the full disclosure of the Payment Suspension Agreement ("PSA") between Aveos and Air Canada.

36. In the PSA, as it is described to the general public in Air Canada's 2008 Annual Report, Air Canada and Aveos entered into an agreement dated October 28, 2008 pursuant to which Air Canada agreed to "temporarily" extend payment terms to Aveos under certain related party agreements. In exchange for the extended payment terms, certain letters of credit related to the Pension and Benefits Agreement were cancelled. The cancellation of the letters of credit provided cash to Air Canada of approximately \$40 million and was offset by the impact of extended payment terms to Aveos of \$22 million, for a net cash flow benefit of \$18 million to Air Canada. The extended payment terms to Aveos were to be reduced over the course of one year, with the first reduction starting approximately six months from the date of the agreement, and with a full return of the letters of credit to Aveos. By October 2009, the letters of credit were to be reinstated to the levels then required under the Pension and Benefits Agreement between the two.

37. Aveos also outlined to the Union a number of other steps it was taking to address its "cash flow problems".

38. In December of 2008 Air Canada and Aveos came back to the IAMAW seeking to resume the discussions on transition and to finalize the Transition MOA. Because it had been the Companies' decision to put the transition discussions on hold in the face of Aveos' financial problems, the Union understood this to be a statement of the Companies' confidence in Aveos's financial future.

39. In December of 2008 and early January 2009 Air Canada pushed very strongly to bring the discussions concerning the Transition MOA to conclusion, as was outlined by the IAMAW in the response filed in Board File No. 27266-C, a section 37 application concerning the Transition MOA.

40. As a result of the pressure from Air Canada, on January 8, 2009, the parties settled the Board application with the Transition MOA.

41. As the Board is aware, the Transition MOA sets out procedures for an orderly and fair transition of employees from Air Canada to Aveos that are to be implemented in the event that the Board issues a ruling splitting the units. The Transition MOA envisages an Application to be made to the Board jointly by Air Canada and Aveos (and not the IAMAW) in which the Companies would place before the Board all the facts and documents relating to the transaction of October 2007 and the agreements between Air Canada and Aveos.

42. On January 21, 2009 the Board held a hearing by video conference at which the IAMAW, Air Canada and Aveos were in attendance. On January 22, 2009 the Board issued an order acknowledging that the Transition MOA was in compliance with the requirements of the Code, confirming that the MOA constituted a full and final settlement of the complaint in Board File No. 26054-C, and directing the parties to co-operate in implementing the terms of the MOA.

### Events Since January 22, 2009

43. The Transition MOA originally envisaged that Air Canada and Aveos would file their joint application to the Board after the Board issued an order incorporating the Agreement.

44. However, in or around the beginning of February, scant weeks after the Transition MOA was signed, the IAMAW was advised by Aveos that Aveos had defaulted on an interest payment to a lender and had been given until February 20, 2009 to complete a restructuring plan in order to avoid enforcement and insolvency proceedings.

45. It now appears that Aveos in fact went into default on its interest payments on January 16, 2009, just days after the Transition MOA was signed and before the parties' attendance before the Board on January 21, 2009 and the issuance of the Board's order of January 22, 2009.

46. At the time that the IAMAW was advised of Aveos' insolvency, the Union immediately made it clear that it was its intention to vigorously oppose the joint company application to the Board envisaged under the Transition MOA, unless Aveos could be demonstrated to be a viable business capable of meeting its obligations to the employees to be transitioned.

47. Obviously, the Union has at no time been willing to see thousands of its members sent over a cliff to an insolvent entity for the financial benefit of Air Canada and ACE Aviation, and it expressed the view to the Companies that it did not expect the Board to see any statutory or labour relations reason to mandate this.

48. Accordingly, in February 2009, the transition process was put on hold pending further developments concerning the restructuring of Aveos.

49. The Union, however, continued in good faith to cooperate with the Companies to finalize the administrative processes necessary to implement the Transition MOA, including through the completion of the interest arbitration before Arbitrator Teplitsky to resolve outstanding issues under the Transition MOA, and through its continued participation in meetings with the Companies concerning issues of implementation, which are ongoing as of the present date.

50. At the end of February 2010 Aveos advised the Union that they did not anticipate that the plan would be finalized for at least another 6 - 8 weeks.

51. In March of 2009, with Aveos still operating under forbearance agreements, an agreement was reached before Arbitrator Teplitsky that Air Canada and Aveos would not move to file an application before the Board until either the parties were in agreement that this was appropriate, or until a further meeting had been held before Arbitrator Teplitsky.

The purpose of that meeting was to provide Arbitrator Teplitsky with a final opportunity to mediate an agreement between the parties.

52. By March of 2009 Air Canada was facing financial problems of its own in the form of a \$2.9 billion dollar solvency deficiency in its pension plans, with a \$100M balloon payment due imminently under regulation, and with a round of negotiations with all of its Unions coming up.

53. The Board will be aware of the events in those negotiations from the submissions filed in Board Files 27635-C and 27616-C (section 37 applications concerning the June 8, 2009 Agreements). Ultimately, with the assistance of government appointed mediators, including The Honourable Mr. James Farley Q.C., all Air Canada's Unions agreed to extend their collective agreements until March 31 2011, and to support pension regulatory relief to be provided by the Government of Canada.

54. In June 2009, in the context of the collective agreement negotiations and the multi-party pension negotiations, Air Canada and the IAMAW also reached an agreement to formalize the status quo understanding that there could be no transition to Aveos of Air Canada employees unless Aveos was restructured into a viable business.

55. The June 8, 2009 MOA contains the following provision:

Air Canada and Aveos will not file their joint application pursuant to sections 18.1, 44, 45 and 46 of the Canada Labour Code with the Canada Industrial Relations Board (CIRB) until Aveos has successfully adopted a viable plan to restructure its business, and the specifics of that restructuring have been communicated, under the provisions of the agreed-to Non-disclosure Agreements, to the IAMAW leadership and their advisors. The statement of facts in and the exhibits to the joint application will be updated as necessary at that time, including by placing before the Board a copy of this Agreement, the restructuring plan and all current agreements between Aveos or affiliated companies and ACE, Air Canada, ACGHS and Air Canada Cargo, as set out in paragraph 16 of Appendix A to the Transition MOA. Air Canada and Aveos will also provide ongoing disclosure to the IAMAW leadership and their advisors concerning the financial situation of Aveos and the terms of all agreements between Air Canada and Aveos until the close of the Extension Period.

56. The June 8 2009 Agreement also provides that transition cannot occur prior to the close of the Extension Period, and contains procedural agreements to facilitate the completion of the administrative steps to implement transition by that date, which is April 1, 2011.

57. It was at all times also clearly understood that the IAMAW would oppose any application to the Board in the event that the post-restructuring relationship between Aveos and Air Canada provided grounds for a common employer declaration by the Board.
58. The bilateral process by which the June 8, 2009 MOA was negotiated left the Union in no doubt that the insolvent Aveos was operating under the de facto control of Air Canada. It is instructive in this regard that Air Canada counsel was able to provide the IAMAW with an undertaking to obtain the formal agreement of Aveos to the amendments to the Transition MOA negotiated in the June 8, 2009 Agreement, which undertaking was met in the form of agreements obtained in the March 12 2010 restructuring.
59. Air Canada and Aveos agree that the June 8, 2009 agreement amends the Transition MOA of January 2009.
60. As of June 8, 2009, when the Agreement to amend the Transition MOA was signed, Air Canada was advising the IAMAW and the government appointed mediator, Justice Farley, that the restructuring of Aveos would be completed imminently.
61. As it turned out, it was January 27, 2010 before Aveos announced that it had reached an agreement in principle on a consensual restructuring, and March 12, 2010 before that agreement was finalized. The IAMAW is not aware why the Companies chose to wait until the beginning of May to release to it documents relating to the restructuring.
62. In May 2010 documents relating to the implementation of the restructuring were released to the IAMAW in electronic form only. Shortly thereafter the IAMAW's internal Washington based research economist was able to begin working to review and analyze these documents. Union representatives also attended a meeting at Aveos in which Aveos gave a presentation that outlined the restructuring in general terms.
63. On May 21, 2010 the Union was advised that the Companies intended to file the Application at the Board and that they were seeking a meeting with Arbitrator Teplitsky to comply with the Agreement reached in March 2009 that no filing would be made absent a further meeting before Arbitrator Teplitsky.
64. By that time the Union's internal advisor had identified some concerns arising from his review of the documents, and the Union therefore made a request of the Company to allow access to the documents to its legal advisors.
65. On June 14 2010 the Union wrote to the Companies expressing its preliminary concerns arising from the documents and requesting additional documents and further information.
66. At that time the Union made its request to be provided with the business plan or plans that underpin and define the plan to restructure Aveos's business, as part of the

Company's obligation to provide the Union with "the specifics of the restructuring" as a precondition of filing.

67. A brief meeting of all the parties before Arbitrator Teplitsky was held by teleconference on June 15, 2010 pursuant to Air Canada's request and the March 2009 agreement. The Arbitrator received a copy of the Union's June 14 2010 disclosure request, as well as oral submissions from all of the parties. He was not in possession of the disclosure provided to date. The Companies took the position that, by convening the meeting, they had met any obligation arising from March 9, 2010, and the Union took the position that the mediation meeting(s) before Teplitsky should be substantive and based on proper disclosure.

68. On June 16, 2010 Arbitrator Teplitsky issued a ruling that the CIRB is the appropriate forum for the resolution of the issues, including the disclosure issues, and that the employers may proceed with an application to the CIRB.

69. Arbitrator Teplitsky was acting pursuant to the March 2009 agreement. Accordingly he did not purport to make any ruling as to whether the companies had met the preconditions for filing as set out in the amended Transition MOA.

70. Since that time Aveos has provided a limited amount of forward looking financial information and has provided disclosure of the consolidated financial results of Aveos Holding Company to August 2010.

71. On the advice of its internal research economist, the Union retained expert assistance in the person of Mr. Paul Stehelin. Mr. Stehelin is retired from his position as President of Deloitte & Touche, and chair of its International Restructuring Committee. He has served as an advisor to Industry Canada in Air Canada's CCAA proceedings and has acted as an advisor to the Competition Bureau in cases involving Air Canada and in assessing the potential viability of a proposed merger between PWA and Air Canada. His extensive resume has been provided to the parties and the Board in the Joint Application.

72. Mr. Stehelin has requested further information in order to provide the Union with definitive advice concerning the financial situation of Aveos and the viability of its restructuring plan, both of which are of core relevance to the current relationship between the parties on the Union's current view of the case.

73. The IAMAW's outstanding requests for production can be summarized as follows:

- (a) A complete copy of Aveos's current business plan or plans;
- (b) Copies of all documents provided to Aveos's lenders to date, including but not limited to the business plans and consultant reports created in the course of the restructuring;



- (c) Information concerning the basis of the consolidated financial reports that have been provided, as requested by the IAMAW's expert advisors in order to assess the viability of Aveos's restructuring plan, including unconsolidated financial statements.
- (d) The IAMAW's actuary has also requested details of the assumptions used by Aveos to calculate the pension deficiency numbers that appear on Aveos's document "Pension Deficiency and Payments", in order to determine the extent of the liability that would move to Aveos from Air Canada in the event that the Board issues an order severing the current units.

74. The Companies have refused to provide this information to the Union.

75. The positions of the Union as set out below are based on its understanding of the legal documents implementing the restructuring and the advice that Mr. Stehelin is able to give based on the information in his possession. They are also informed in part by the negative inferences it must draw from the Companies' ongoing refusal to disclose to the Union's expert advisers its business plans and unconsolidated financial information concerning Aveos Fleet.

#### SUBMISSIONS

76. Sections 35, 44, 45 and 18.1 of the Code all share a common purpose of protecting the ongoing vitality of bargaining rights granted under the Code.

77. The evidence in this case will show the total dependence of Aveos Fleet on Air Canada, including its very existence, which would not have continued past its insolvency unless it had served Air Canada's purposes.

78. The control that Air Canada holds over Aveos Fleet is apparent in virtually every document that the Union has seen to date concerning the restructuring and Aveos Fleet's current financial circumstances.

79. What it means to have bargaining rights under the Code is that a bargaining agent is given a legally enforceable right to sit across a bargaining table from the people who actually control the terms and conditions of work of its members.

80. As is well known, the Board has identified five "objective criteria" which must be met in order for it to exercise its discretion under section 35 to make a single employer declaration. The Board requires that there be:

1. two or more enterprises, i.e., businesses,
2. under Federal jurisdiction,

3. associated or related,
4. of which at least two, but not necessarily all, are employers..., and
5. the said businesses being operated by employers having common direction or control over them.

*Murray Hill (1988) 74 dl 127*

*Provost Cartage, decision No. 1170 of the Board dated July 9, 1996*

81. In Board File 28234-C Air Canada and Aveos Fleet have come to the Board asking it to divide bargaining units in which Aveos and its predecessor ACTS have functioned as common employers since November 2002. They have argued that the Board need look no further than a single transaction that took place some three years ago, in October 2007, in which majority ownership of ACTS passed from ACE Aviation to a consortium of private equity lenders.

82. The Board's jurisprudence, however, makes it clear that common employer status under section 35 does not require common majority ownership of the employers, or majority ownership of one employer by the other. The basic principle that separate ownership is no bar to a common employer declaration has been confirmed in numerous other cases. In *Provost Cartage*, for example, the Board said:

"... the significant control exercised by P over the business means that even if the Coop alone were to negotiate with the CEP, Provost would still have a significant presence at the bargaining table because of its considerable influence. By bargaining directly with Provost, the applicant could then require P, which exercises significant control over the affairs of the business, to bargain in good faith and experience the economic sanctions that are permissible in a period of bargaining. Thus, to make bargaining effective, the applicant will deal directly with the party that has the real power to increase the Coop's revenues or reduce the annual fees to permit pay increases or other benefits sought" 29

#### **Air Canada and Aveos Remain in a Common Employer Relationship**

83. Air Canada currently holds a multi-dimensional hold over Aveos, which includes the following features. While not all of these features are new since the restructuring, many were new or altered in the restructuring and all are to be considered cumulatively and in the context of the financial weakness of Aveos itself:

- (a) Air Canada now owns a minority stake in Aveos as a shareholder, valued at \$49M;
- (b) Air Canada is overwhelmingly Aveos's major customer;
- (c) Air Canada provides Aveos with a number of critical services;

- (d) Air Canada is party to agreements to pay for employee pension liabilities post-transition that Aveos would be otherwise unable to satisfy;
- (e) Air Canada owns most of the real estate from which Aveos operates;
- (f) Air Canada is a major lender to Aveos, in the form of a \$22 million interest free loan payable over six years, with the obligation to repay subject to conditions.

84. The information in the above paragraph is all available in Air Canada's publicly filed documents.

85. In addition, it is the Union's view that its review of the confidential restructuring documents as a whole serves to further demonstrate that Air Canada's role was fundamental to this restructuring.

The following section contains confidential information:

