

FEDERAL COURT OF APPEAL

BETWEEN:

**ROGERS MEDIA INC. D.B.A. CITYNEWS 1130
(CKWX-VANCOUVER)**

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27-OCT-2022		
Donya Miri		DOC.
Toronto, ONT		-1-

Applicant (Employer)

- and -

UNIFOR

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) 27-OCT-2022

Issued by: D. Miri - Registry Officer
(Registry Officer)

Address of local office: 180 Queen Street West, Toronto, ON M5V 3L6

Date: October 27, 2022

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APPLICATION

This is an application for judicial review in respect of Order 11750-U in the decision dated September 27, 2022 in case 035729-C (the “**Decision**”), of the Canadian Industrial Relations Board (the “**Board**”) regarding an application made pursuant to section 24(1) of the *Canada Labour Code* (the “**Code**”), seeking certification for Respondent (“**Unifor**”) as a bargaining agent for a unit of employees of Rogers Media Inc d.b.a.. Citynews 1130 (CKWX-VANCOUVER) (“**Rogers**”).

1. The Applicant makes the herein application for:
 - a. An order that the decision of the Board certifying Unifor as the as the bargaining agent for select employees of Rogers (the “**Decision**”) be set aside;
 - b. An Order to Stay the Decision made by the Board until the matter is determined by this Honourable Court;
 - c. An order that the matter be remitted back to the Board to be determined by a panel not including Ms. Berthiaume, Ms. Mittleman, and Mr. Thimineur, in line with any guidance provided by this Court;
 - d. Costs against the Respondent; and,
 - e. Such further and other relief that this Honourable Court deems just.

The grounds for the application are:

2. The Decision is incorrect and unreasonable on the following grounds:

- a. There is a complete absence of a logical pathway between the evidence adduced at the Board and the findings of fact. The Board's findings of fact are clearly not reasonable or defensible and have been made without regard to the evidence;
- b. The criteria used in assessing the parties' submissions were unequally and unevenly applied resulting in capricious and arbitrary findings;
- c. The Decision exhibits a repeated failure to weigh the evidence which otherwise supports the Applicant. The evidentiary underpinning is missing and does not support the conclusions drawn that the Respondents submissions did not contain evidence and/or submissions with regards to various conclusions drawn; and
- d. The Board erred in law in certifying Unifor as bargaining agent for all employees of Rogers working at CityNews 1130 (CKWX-Vancouver), excluding managers, those above the rank of manager and employees already represented by a bargaining agent.

The Parties

3. The Applicant, Rogers, is a telecommunications company that operates to provide, internet, cable, and phone services to clients.
4. The Respondent, Unifor, is a general trade union and is the largest private sector union operating in Canada with over 315,000 members.

Background to the Decision

5. On 4 May 2022, Unifor submitted an application to the Board for certification as the bargaining agent for “[a]ll employees of Rogers Media Inc. working at CityNews1130, excluding managers and those above the rank of manager.”

6. On 16 May 2022, Rogers responded to Unifor’s application for certification. Rogers’ main submissions in response centered on limiting the geographic scope of the bargaining unit, the fact no community of interest was shared among the impugned employees, the impact of including employees that share services with Rogers’ other locations (the “**Shared Services Employees**”), and on the exclusion of anchors, producers, and employees with Talent Agreements.

7. Supporting arguments were made by Rogers for each of the above submissions. On 27 May 2022, Unifor responded to Rogers’ submissions disputing each point, and claiming mainly that Rogers has not put forward evidence in support.

8. On 14 July 2022, the Board issued an interim decision in which it certified Unifor as the bargaining representative for Rogers’ employees other than managers and those ranking above managers, and excluding the Shared Services Employees. The Board held that Rogers provided no evidence to support their arguments, namely, with regard to supervisory duties performed by producers and anchors and their shared community of interest with the other members of the bargaining unit, as well the integration of the Talent Agreements into a collective agreement. The Board reserved the right to make a decision on the additional employees as it was of the opinion there was not enough evidence on the record to make a decision at that point.

9. On 15 September 2022, Unifor submitted to the Board a request for withdrawal of its application for certification as the bargaining representative for the Shared Services Employees, which was consented to by Rogers, and ultimately granted by the Board.

The Decision Under Review

10. Following the request and consent on the withdrawal of the Shared Services Employees, the Board issued the Decision, a final order for certification on 27 September 2022. This order confirmed the interim order and certified Unifor as the bargaining agent for the unit described in paragraph 8 above. The Shared Services Employees were excluded from the unit.

11. This order relied on and reiterated the Board's interim order issued on 14 July 2022 regarding the submissions made with respect to employees other than the Shared Services Employees.

12. The interim order of the Board is limited in its reasoning as to how it came to its conclusions. It repeatedly states that "the employer did not provide the Board with any evidence..." and "the employer does not dispute the applicant's submissions and evidence..." when these statements are inaccurate. In response to Rogers' submissions as to the restriction of the bargaining unit geographically limited to that: "...in the circumstances, the Board is not convinced of the need to limit the scope of the certification order to a specific geographic address."

13. The Board stated that Rogers did not dispute the Applicant's submissions in regard to the inclusion of anchors, producers, and employees with talent agreements. However, Rogers pleads that its initial submissions dated 16 May 2022 serve to dispute the Applicant's submissions in that regard.

14. Rogers submits that the applicable standard of review on judicial review is correctness. As was clearly stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. *Vavilov* advances reasonableness as the presumptive standard for reviewing a decision's "merits", while making a principled exception for litigants' fundamental rights to natural justice and procedural fairness, which are instead assessed for correctness.

15. While the Board acknowledged the concerns of Rogers raised regarding the (in)appropriateness of the bargaining unit, it did not demonstrate any of its reasons on this issue – it only stated its conclusion. Therefore, it is not possible to understand the Board reasoning on this critical point, especially when it seems to have ignored Rogers' submissions of the same.

16. This was also the case in *Bragg Communications Inc. v Unifor*, 2021 FCA 59, where the court held that while the Board acknowledged the respondent's concerns regarding the appropriateness of the bargaining unit, it did not provide any reasoning as to why (paragraph 9). The court remitted the decision back to the Board based on the lack of reasoning provided by the Board in its initial decision (see also *Rogers Communications Canada Inc. v Metro Cable TV Maintenance*, 2017 FCA 127 at paras 21 and 22 for a similar decision pre-*Vavilov*).

17. It is clear based on the language used by the Board in its decision, "the employer does not dispute...", that the Board failed to consider or even acknowledge key submissions made by Rogers in regard to the appropriateness of the bargaining unit even when excluding the additional employees, resulting in a violation of procedural fairness in this respect.

RELEVANT STATUTES

18. Section 18.1 of the *Federal Courts Act*.

19. *Federal Court Rules*, SOR/98-106.
20. *Canada Labour Code*, RSC, 1985, c L-2.
21. Such further and other grounds as counsel may advise and this Honourable Court may allow.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

22. The interim Order of the Board dated July 14, 2022.
23. The Decision by the Board dated September 27, 2022.
24. The Pleadings and supporting material filed by both the Applicants and Respondents before the Board;
25. Such further and other evidence as counsel may advise and this Honourable Court may permit.



Date: October 27, 2022

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