Canada Industrial Relations Board | Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Our File: 033566-C

Document No.: 0722216-D

April 29, 2026

BY WEB PORTAL

Ken Stuebing
CaleyWray
Labour/Employment Lawyers
Suite 1600
65 Queen Street West
Toronto, Ontario
M5H 2M5

Emilie Paquin-Holmested
Fasken Martineau DuMoulin LLP
Suite 3500
800 Victoria Square
Montréal, Quebec
H4Z 1E9

Stephanie Buongiorno
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)
Legal Department
Suite 800
234 Eglinton Avenue East
Toronto, Ontario
M4P 1K7

Shari Munk-Manel
McMillan LLP
Suite 2700
1000, Sherbrooke West
Montréal, Quebec
H3A 3G4

In the matter of the *Canada Labour Code (Part I–Industrial Relations)* and an application pursuant to sections 18, 18.1, 35, 44, 45 and 46 of the *Code* by the Teamsters Canada Rail Conference, applicant; Canadian Pacific Railway Company, respondent; TC Local 1976 USW, certified bargaining agent; Central Maine & Québec Railway Canada Inc., employer. (033566-C)

Canada

Further to the hearing held in the above-noted matter, the parties will find enclosed the Reasons for decision issued by a panel of the Canada Industrial Relations Board (the Board) composed of Ginette Brazeau, Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code*.

To comply with section 20 of the *Official Languages Act*, the Reasons will be translated and published on the Board's website at www.cirb-ccri.gc.ca. A copy may be obtained upon written request to the undersigned.

Sincerely,

Martine Paradis
Team Leader, Registry

Encl.

c.c.: Jesse Peters

Canada Industrial Relations Board Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Teamsters Canada Rail Conference,

applicant,

and

Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway),

respondent,

and

TC Local 1976 USW,

certified bargaining agent,

and

Central Maine & Québec Railway Canada Inc.,

employer.

Board File: 033566-C
Neutral Citation: 2026 CIRB **1244**
April 29, 2026

The panel of the Canada Industrial Relations Board (the Board) was composed of Ms. Ginette Brazeau, Chairperson, sitting alone pursuant to section 14(3) of the *Canada Labour Code* (the *Code*).

Appearances

Mr. Ken Stuebing, for the Teamsters Canada Rail Conference;

Ms. Emilie Paquin-Holmested, for the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway);
Mr. Daniel Daigle, for TC Local 1976 USW;
Ms. Shari Munk-Manel, for Central Maine & Québec Railway Canada Inc.

I. Nature of the Application

[1] In November 2019, the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway) (CPKC) announced that it was buying back the shortline railways (short lines) in Eastern Canada that it had previously sold in 1996. A transaction occurred whereby CPKC entered into a share purchase agreement with Central Main and Québec Railway Canada Inc. (CMQR).

[2] On February 20, 2020, the Teamsters Canada Rail Conference (TCRC or the union) filed an application pursuant to sections 18, 18.1, 35, 44, 45 and 46 of the *Code* seeking to assert bargaining rights over the work on those short lines that had been reacquired by CPKC.

[3] In its application, the TCRC argues that it has pre-existing bargaining rights over the work on the short lines and invites the Board to declare that the collective agreement between it and CPKC applies to the employees working on those short lines. In the alternative, it takes the position that CPKC's reacquisition of the CMQR short lines constitutes a sale of business pursuant to section 44 of the *Code* or that CMQR and CPKC operate as a single (common) employer pursuant to section 35 of the *Code*. In either of these cases, the TCRC submits that the Board should review the bargaining unit structure, include the CMQR running trades employees in the national bargaining unit and declare that the TCRC is the bargaining agent for all running trades employees of CMQR and CPKC.

[4] For the reasons that follow, the Board finds it appropriate to review the bargaining unit structure and is of the view that consolidating running trades would serve a valid and sound labour relations purpose.

II. Background and Facts

[5] CPKC is a Class I railway that operates a number of rail lines throughout Canada and the United States. These include short lines that operate in specific regional areas.

[6] The TCRC represents some 12,000 multi-craft employees in the railway industry, including a national bargaining unit of all running trades employees at CPKC. It is party to a collective agreement that covers that bargaining unit.

[7] Prior to 1996, the short lines that operated in Eastern Canada were owned and operated by CPKC through its related entity, the St. Lawrence & Hudson Railway (STL&H), and the running trades employees who worked on those lines were included in the national bargaining unit and subject to the collective agreement of the TCRC (or its predecessor union). These short lines are identified as: Lyndonville; Newport; Adirondack; Sherbrooke; Stanbridge and Saint-Guillaume. The employees assigned to these short lines were included on the Quebec master seniority list.

[8] In May 1996, CPKC served a notice of material change on the TCRC's predecessor union because of its plans to sell the short lines in Eastern Canada. The union and CPKC entered into a Memorandum of Agreement (1996 MOA) concerning the sale of the lines, which provided certain benefits to the 43 employees affected by the sale. Also included in the 1996 MOA was a clause indicating that if STL&H resumed operation on the said short lines, CPKC's employees on the Quebec master seniority list would be entitled to work on those lines (see clause 11.2 of the 1996 MOA).

[9] The rail lines were sold to Iron Road Railways and other operators. Subsequent transactions resulted in portions of these short lines being sold and resold to a variety of entities.

[10] One of those entities was the Quebec Southern Railway Company Ltd. (QSR), which operated part of the lines in Quebec with its establishment in Farnham, Quebec. In 1999, the United Steelworkers of America, Local 9438 (USW 9438) was certified by the Quebec labour relations board (la Commission des relations du travail du Québec) to represent a unit of employees working for QSR.

[11] On or about January 8, 2003, Montreal, Main & Atlantic Canada Co. (MMA) acquired QSR. In June 2004, this Board declared that a sale of business had occurred (which brought the operation under federal jurisdiction), that MMA was the successor employer to QSR and that MMA was bound by the collective agreement between USW 9438 and QSR (see Board order no. 8676-U).

[12] USW 9438 and the Transportation Communications Local 1976, United Steelworkers of America (USW 1976) subsequently merged. By Board order no. 9103-U issued on May 17, 2006, the Board declared USW 1976 to be the successor bargaining agent representing all employees working for MMA. This union subsequently changed its name to TC Local 1976 USW (USW), and the certification order was updated (see Board order no. 9848-U).

[13] The rail tragedy in Lac-Mégantic, Quebec, occurred in July 2013. MMA, the rail operator involved in the disaster, subsequently filed for bankruptcy. In May 2014, Railroad Acquisition Holdings acquired MMA's assets and formed the entity known as CMQR. The Board then declared that a sale of business had occurred, that CMQR was the successor employer to MMA and that the USW continued as the certified bargaining agent for the employees working at CMQR (see Board order no. 10709-U).

[14] CMQR is a freight railroad company with operations in the Eastern corridor, from the province of Quebec to the United States (state of Maine). It owns and operates approximately 774 kilometres of rail lines. It also offers rail car repair, rail car storage and tank car cleaning and repair services to customers. It operates through both its Canadian (Central Maine & Quebec Railway Canada Inc.) and its American (Central Maine & Quebec Railway US Inc.) entities.

[15] The USW and CMQR are parties to a collective agreement with a term ending on December 31, 2026. When the application was filed, there were approximately 48 employees in the bargaining unit consisting of running trades employees, engineers and maintenance of way employees, but excluding office employees. At the time of the hearing, the number of employees had increased to 51.

[16] In November 2019, CPKC announced the acquisition of CMQR. In its press release, it stated that this acquisition would provide its customers with "seamless, safe and efficient access to ports at Searsport, Maine and to Saint John, New Brunswick, via Eastern Main Railway Company

(EMRY) and New Brunswick Southern Railway (NBSR), thereby preserving and enhancing competition." The acquisition took the form of a share purchase agreement by which CPKC acquired all the shares of CMQR and its outstanding capital. It then announced the conclusion of this transaction on December 30, 2019, and CMQR became a wholly owned subsidiary of CPKC.

[17] When the TCRC requested clarification from CPKC on whether its members would perform the work on these reacquired lines, CPKC indicated that, although CMQR was its subsidiary, it continued to operate separately and that the train, engine, mechanical and engineering employees working on these lines were governed by a collective agreement in place with the USW.

[18] That response prompted the present application.

[19] The parties disagree on the characterization of the transaction and its impact on bargaining rights.

[20] The parties initially filed extensive submissions, including copies of the share purchase agreement between CPKC and CMQR, the Engineering, Mechanical and Legal Services Agreement between CPKC and CMQR as well as its amended version dated September 1, 2020, and the Master Run-Through Agreement. Those documents are protected by a confidentiality order (see Board order no. 1252-NB).

[21] The Board held a case management conference on October 28, 2022, and confirmed its directions in a letter dated October 31, 2022. After considering the parties' written submissions, the Board decided to dismiss the first issue raised by the TCRC with respect to its residual rights. The reasons for that decision are provided below.

[22] The Board also invited the parties to provide their written submissions on whether a sale of business had taken place and on whether the two employers were operating as a single employer within the meaning of the *Code*. The parties did file their full submissions on these questions as directed.

[23] The Board convened a hearing and directed the parties to focus their evidence and arguments on the factors that the Board considers in determining whether it will review the bargaining unit structure in the context of a sale of business or a single employer declaration. In essence, the

Board focussed its inquiry on whether a labour relations purpose would be served by reviewing the bargaining unit structure.

[24] The hearing was held from September 27 to 29 and on October 26, 2023.

[25] The Board heard from the following witnesses (positions are those indicated at the time of the hearing):

TCRC:

- Mr. Wayne Apsey, General Chairman for CPKC CTY East;
- Mr. Ed Mogus, General Chairman for CPKC LE East;
- Mr. Dennis Psichogios, Senior Vice General Chairman for CPKC CTY East; and
- Mr. Chris Yeandel, TCRC representative, LE East.

USW:

- Mr. François Daigle, President of USW, local 9438 (the unit of CMQR employees).

CPKC:

- Mr. Geoff Hare, General Manager for the Central Division at CPKC; and
- Ms. Lauren McGinley, Director, Labour Relations at CPKC.

CMQR:

- Mr. David Pezzaniti, Managing Director of Labour Relations for Soo Line Railway, a subsidiary of CPKC, and Director of Labour Relations at CPKC from 2020 until April 2023.

[26] The witnesses presented their evidence through will-say statements and were then crossed-examined on their statements at the hearing.

[27] The Board will first provide its reasons for its decision to dismiss the TCRC's arguments asserting its residual rights regarding the work on the short lines. It will then turn to the application for a declaration of a sale of business or of a single employer and the issues addressed at the hearing regarding the review of the bargaining unit structure.

A. Residual Bargaining Rights

[28] In its application, the TCRC argued that it held residual bargaining rights for the work on the CMQR lines based on the 1996 MOA. The Board dismissed the argument during a case

management meeting held on October 31, 2022, indicating that it would provide its reasons for doing so in its final decision on the application.

[29] The TCRC had argued that since it held bargaining rights over the work on the Eastern short lines prior to their divestiture in 1996, in combination with the 1996 MOA and the reference to the Quebec master seniority list in its collective agreement with CPKC, it should once again have bargaining rights over the work on the lines that were reacquired by CPKC. It asked the Board to issue a declaration under section 56 of the *Code* that the collective agreement between it and CPKC was to apply to the employees and the operations of the reacquired short lines.

[30] In response, the USW argued that the 1996 MOA could not prevail over a certification order issued by the Board, and which granted it bargaining rights for the unit of employees working at CMQR. It stated that it was not a party to the 1996 MOA and that, in any event, the MOA was not determinative of the issues before the Board in the present application. It submitted that the TCRC was attempting to expand its bargaining rights inappropriately.

[31] CPKC took the position that the employees working on the short lines were not its employees. It stated that the true employer remained CMQR and, accordingly, that the TCRC's bargaining rights did not apply to CMQR employees. It also submitted that the TCRC was essentially attempting to challenge the Board's 2004 decision when it certified the USW as the bargaining agent for the CMQR employees. It argued that it was unable to do so given the time that had passed since that decision.

[32] Similarly, CMQR argued that the employees working on the said short lines were not CPKC employees as it was CMQR that selected, hired, remunerated, disciplined, controlled and set the conditions of employment for those employees. In its view, as CPKC was not the employer, it followed that section 56 of the *Code* could not apply, since that provision is aimed at a collective agreement that is in place between the employer and the bargaining agent. CMQR further contended that there had been no reintegration of the lines into CPKC's operations. It stated that the lines remained separate and operated distinctly from CPKC's operations.

[33] Further, CMQR contended that the TCRC had no residual bargaining rights over the operations of the short lines, as there was no transfer of bargaining rights in 1996 when the lines

were sold to Iron Road Railways. In addition, the USW was certified to represent those employees on the short lines, thereby extinguishing any bargaining rights that the TCRC may have had because of the sale.

[34] The Board is of the view that the 1996 MOA between CPKC and the TCRC cannot have the effect of superseding its certification order. When the short lines were sold in 1996, the TCRC did not take any steps to obtain bargaining rights for the employees employed by the new employer. These employees subsequently obtained a certification order from the Quebec labour relations board recognizing the USW as their bargaining agent. The USW's bargaining rights were then continued under the *Code* pursuant to section 44(3) when the provincial operations were transferred to MMA, a federal undertaking. By order of the Board, those bargaining rights flowed through to CMQR when it acquired MMA. A collective agreement negotiated between the USW and CMQR is in force and applies to the employees working on the short lines.

[35] The 1996 MOA is an agreement between CPKC and the TCRC relating to the work over the short lines. However, this agreement did not extend the TCRC's bargaining rights to the new employer or subsequent employers that operated the short lines after CPKC divested itself of them. Nor can the 1996 MOA have the effect of revoking bargaining rights that have been granted by order of the Board. It is well established that the Board maintains exclusive authority over its certification orders and the bargaining units it defines (see *Matthews*, 1999 CIRB 40). Parties are not permitted to negotiate and redefine bargaining units without the Board's review and approval.

[36] Unless the Board grant the application for a declaration of sale of business or for a declaration of single employer and agrees to review the bargaining unit structure pursuant to section 18.1 of the *Code*, the existing bargaining rights over the CMQR lines remain with the USW as defined in Board certification order no. 10709-U.

[37] For these reasons, the Board dismissed the TCRC's argument related to residual bargaining rights.

B. Applications for a Declaration of Sale of Business or Single Employer

[38] As explained above, the Board obtained full written submissions from the parties on whether a sale of business had occurred within the meaning of the *Code* and on whether the criteria for a

declaration of single employer had been met. Although some parties indicated that they reserved their right to make additional submissions on these issues, it is well established that the Board has the authority to decide any matter before it without holding an oral hearing and without further notice to the parties (see *Canadian National Railway Company*, 2009 CIRB 446 (*CN 446*), affirmed by the Federal Court of Appeal in *Teamsters Canada Rail Conference* v. *Canadian National Railway Company*, 2009 FCA 368). Parties are expected to put forward their entire case when they are invited to file their written submissions.

[39] In this case, the Board is satisfied that it has the necessary facts and submissions to determine whether a sale of business occurred or whether the criteria for a single employer declaration are met.

[40] After careful consideration of the submissions and documents on file, the Board has found that a sale of business has occurred within the meaning of section 44 the *Code*. Even if the transaction itself consisted of a transfer of shares, the Engineering, Mechanical and Legal Services Agreement between CPKC and CMQR as well as the Master Run-Through Agreement gives substantive control to CPKC over the operations of CMQR and its rail business. Further, CPKC's public announcement of the acquisition leaves little doubt around the objective of providing seamless freight services across an integrated rail network which includes the short lines. Although there remains a separate bargaining unit for the employees working on the CMQR lines, it does not preclude a finding of a sale of business.

[41] CPKC and CMQR argue that the CPKC's role and responsibilities in the management functions at CMQR are governed by the services agreement and are part of a normal business and commercial relationship between two corporate entities. However, as will be discussed further below, the relationship and organizational structure that is established through the agreements gives effective authority to CPKC to make all management decisions and direct the business operations at CMQR. The Board has previously found a share transfer to constitute a sale of business where a management contract between two companies effectively gave control to the entity acquiring the shares (see *TQS inc.*, 2009 CIRB 470, confirmed on reconsideration in *Remstar Corporation,* 2010 CIRB 530; upheld on judicial review in *Remstar Corporation* v. *Syndicat des employé-es de TQS Inc. (FNC-CSN)*, 2011 FCA 183). Although that case presented unique circumstances (involving a restructuring process under the *Companies' Creditors*

Arrangement Act), it makes clear that the Board has adopted a broad and liberal interpretation of what may constitute a sale of business for the purpose of section 44 of the *Code*.

[42] In the alternative, the Board would also find that the criteria for a single employer declaration (set out in *Murray Hill Limousine Service Ltd. et al*. (1988), 74 di 127 (CLRB no. 699)) are present in the relationship between the two entities. There is no question that there are two employers operating under the federal jurisdiction. However, CPKC and CMQR dispute that the two corporate entities are associated or related or that they operate under common direction or control.

[43] To determine whether the entities are associated or related, the Board examines the degree of interrelationship of their operations, the similarities in activities and services, the degree of integration of operations and the markets they serve as well as the extent of common ownership or management. On these factors, the Board has no difficulty concluding that the two entities are related and associated. CPKC fully owns the shares of CMQR and the acquisition was promoted by CPKC as enhancing its ability to service its clients through an integrated rail network. The two entities operate seamlessly to provide those services to markets across Canada, including to the East and the US.

[44] The Board considers similar factors when assessing whether entities are under common control or direction—they often overlap. In the present matter, in addition to the common ownership and the representation made to the public regarding the seamless operations, the common direction and decision-making that is established through the agreements is sufficient to find that there is common direction or control. It is of particular interest to note that in the Engineering, Mechanical and Legal Services Agreement (as amended) it is the President and CEO of CPKC that is the individual giving instructions to CPKC on behalf of CMQR on a broad range of management and operational issues. While they may remain separate corporate entities, the Board was not persuaded that CMQR operates independently from CPKC. It is CPKC that directly influences the direction of CMQR and directs its day-to-day operations by its direct involvement in all management decisions. The contractual arrangements between the two entities do not insulate them from a finding of common control.

[45] However, as argued by all parties, even where a sale of business occurred or the criteria are met for a single employer declaration, a review of the bargaining unit structure is not automatic.

The Board has broad discretion in deciding whether to review and restructure the bargaining units, and it does so by examining the circumstances of each case and considering a number of factors. In sum, the Board must be persuaded that a review of the bargaining units is justified and conducive to sound labour relations.

[46] The Board convened an oral hearing and invited the parties to focus their evidence and arguments on whether it should exercise its discretion to review the bargaining unit structure.

[47] The Board will briefly summarize the parties' arguments, review the legal principles that apply and then apply these principles to the evidence presented at the hearing.

C. Labour Relations Purpose

1. The Parties' Arguments

a. The TCRC

[48] The TCRC submits that the threshold for the Board to engage in a review of bargaining units as a consequence of a sale of business is different than in an application for review made under section 18.1 of the *Code*. Contrary to this latter application, the Board has wide latitude to undertake a bargaining unit review when a sale has occurred and where it deems it is warranted.

[49] The TCRC points to the Board's decision in *Canadian National Railway Company*, 2011 CIRB 563 (*CN 563*), for the factors that are taken into consideration and argues that those factors apply in this case. It contends that considering the history of bargaining as well as the nature and the overlap of work should lead the Board to conclude that the running trades employees must be included in the TCRC's national unit to ensure harmonious labour-management relations. It argues, based on the evidence presented, that there is a level of operational integration between CPKC and CMQR that justifies reviewing the bargaining units.

[50] Similarly, when it has an application for a declaration of single employer before it, the Board will consider whether there is a labour relations purpose to be served by reviewing the bargaining unit structure. The TCRC takes the position that there is reason to do so in the present circumstances. It contends that there is common control of CPKC and CMQR and that the running trades employees perform the same work for the same operation. The TCRC argues that if the

Board does not intervene, this would encourage the moving of work from CPKC to CMQR, whose collective agreement provides for lower pay. It invites the Board to follow its recent decision in *Canadian National Railway Company*, 2022 CIRB LD 4829 (LD 4829), in which it included a separate bargaining unit of running trades employees at a short line in Alberta in the TCRC's national unit despite the opposition from the incumbent bargaining agent. It submits that the same considerations that were examined in that case apply in the present matter.

b. The USW

[51] Whether under a sale of business application or an application for a declaration of single employer, the USW submits that the onus is on the TCRC to demonstrate that a bargaining unit review is required to achieve more effective or improved labour relations or to achieve a demonstrable labour relations purpose.

[52] Relying on *Canadian National Railway Company*, 2011 CIRB 594 (RD 594), *United Airlines, Inc., Continental Airlines, Inc. and United Continental Holdings, Inc.*, 2013 CIRB 671 (*United Airlines, Inc.*), and *BCT.Telus*, 2000 CIRB 73, the USW submits that the Board must examine a number of factors, including the community of interest, the viability of the unit, the employee wishes, industry practice or pattern, the history of collective bargaining and the employer's organizational structure to determine whether a review of the bargaining unit structure is necessary.

[53] The USW contends that these factors favour maintaining the status quo given the history of bargaining for the employees in its unit. It further stresses the fact that if the Board sweeps the running trades at CMQR into the TCRC bargaining unit, only a very small and unviable unit of employees represented by the USW will remain.

[54] The USW states that the mechanisms provided in sections 35 and 44 of the *Code* are remedial in nature and should not be used to expand bargaining rights. In its view, there is no evidence that the transaction between CPKC and CMQR has created labour relations problems that necessitate reviewing the bargaining unit structure.

c. CMQR

[55] Similarly, CMQR argues that the union has not met its onus of demonstrating that a change to the existing structure is required to achieve improved and more effective industrial relations.

[56] CMQR indicates that when considering the relevant factors, such as the community of interest, the viability of the current bargaining unit, the employees' wishes, the industry practice, the history of collective bargaining and the employer's organizational structure, the status quo is to be preferred. It contends that section 45 of the *Code* is remedial in nature and that there is no evidence of bargaining rights being circumvented in this case.

[57] CMQR also argues that the Board should not exercise its discretion to issue a single employer declaration since no labour relations purpose would be served by doing so. It submits that section 35 of the *Code* seeks to prevent the undermining or erosion of bargaining rights through the creation of complex corporate structures. In its view, there is no evidence of intermingling of employees and no evidence of inter-unit conflict that would be resolved by rationalizing the bargaining unit structure. Further, it states that there is no evidence of bargaining unit employees being adversely affected or of the union's bargaining power being diminished or interfered with.

[58] As the TCRC also filed its application under section 18.1 of the *Code*, CMQR submits that the union simply has not met the higher threshold of demonstrating that the bargaining units are no longer appropriate for collective bargaining. On this basis, it invites the Board to dismiss the application.

d. CPKC

[59] CPKC denies that a sale of business occurred for the purposes of sections 44 and 45 of the *Code*. Even where all the conditions for a sale of business would be met, it argues that the Board should not exercise its discretion to review the bargaining unit structure, as there is no labour relations purpose to be served by doing so.

[60] CPKC submits that the main purpose of sections 44 and 45 of the *Code* is to avoid outdated bargaining units following a sale of business. In CPKC's view, considering the community of interest that exists among CMQR employees, the employer's organizational structure and the

ongoing viability of the bargaining units, as demonstrated by the renewed collective agreement at CMQR, no change is required to address the labour relations between the parties, and a review would serve no purpose.

[61] CPKC also submits that the criteria for a single employer declaration have not been met and argues that even if they were met, there is no labour relations purpose to be served by issuing a declaration. Further, CPKC states that the objective of a single employer declaration pursuant to section 35 of the *Code* is to prevent the erosion of bargaining rights through business reorganizations. This is a remedial provision that is not meant to expand existing bargaining rights or to exempt a bargaining agent from having to organize a distinct group of employees. CPKC relies on the factors examined in *Algoma Central Corporation and Algoma Great Lakes Shipping Inc.*, 2018 CIRB 887, and notes that in the present case, there is no intermingling of employees, no inter-unit conflicts and no evidence showing harm or a threat to the employees' collective agreement rights or the union's representation rights. Accordingly, CPKC invites the Board to dismiss this part of the application, as there is no purpose in issuing a single employer declaration.

[62] Regarding the part of the application under section 18.1 of the *Code*, CPKC argues that there are two distinct employers in the present matter and that section 18.1 simply does not apply in these circumstances.

III. Analysis and Decision

A. Legal Principles

[63] The Board has the discretionary authority to review and redefine bargaining unit structures in various circumstances.

[64] First, under section 18.1 of the *Code*, the Board can review the bargaining unit structure on application by an employer or a union:

> **18.1 (1)** On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining.

[65] In these types of applications, the onus is on the applicant to demonstrate that the existing bargaining unit structure is no longer viable or appropriate for effective and harmonious labour

relations. The Board confirmed in *CN 446* that there must be compelling reasons to review the existing bargaining unit structure, and it must be convinced that the current units are no longer appropriate for collective bargaining.

[66] Second, when a sale of business occurs, the Board has broad discretion to review the bargaining units to ensure that they are viable and promote sound labour relations under the new organizational structure. The relevant portions of sections 44 and 45 of the *Code* read as follows:

> **44 (1)** In this section and sections 45 to 47.1,
>
> > ***business*** means any federal work, undertaking or business and any part thereof; (*entreprise*)
> >
> > ***provincial business*** means a work, undertaking or business, or any part of a work, undertaking or business, the labour relations of which are subject to the laws of a province; (*entreprise provinciale*)
> >
> > ***sell***, in relation to a business, includes the transfer or other disposition of the business and, for the purposes of this definition, leasing a business is deemed to be selling it. (*vente*)
>
> **(2)** Where an employer sells a business,
>
> > **(a)** a trade union that is the bargaining agent for the employees employed in the business continues to be their bargaining agent;
> >
> > **(b)** a trade union that made application for certification in respect of any employees employed in the business before the date on which the business is sold may, subject to this Part, be certified by the Board as their bargaining agent;
> >
> > **(c)** the person to whom the business is sold is bound by any collective agreement that is, on the date on which the business is sold, applicable to the employees employed in the business; and
> >
> > **(d)** the person to whom the business is sold becomes a party to any proceeding taken under this Part that is pending on the date on which the business was sold and that affects the employees employed in the business or their bargaining agent.
>
> …
>
> **45** In the case of a sale or change of activity referred to in section 44, the Board may, on application by the employer or any trade union affected, determine whether the employees affected constitute one or more units appropriate for collective bargaining.

[67] Third, the Board has a similar discretion under section 35 of the *Code* following a single employer declaration:

> **35 (1)** Where, on application by an affected trade union or employer, associated or related federal works, undertakings or businesses are, in the opinion of the Board, operated by two or more employers having common control or direction, the Board may, by order, declare that for all purposes of this Part the employers and the federal works, undertakings and businesses operated by them that are specified in the order are, respectively, a single employer and a single federal work, undertaking or business. Before making such a declaration, the Board must give the affected employers and trade unions the opportunity to make representations.
>
> **(2)** The Board may, in making a declaration under subsection (1), determine whether the employees affected constitute one or more units appropriate for collective bargaining.

[68] As confirmed in the Board's case law, a bargaining unit review arising from a sale of business or a single employer declaration does not require a finding that the bargaining units are inappropriate for collective bargaining before the Board can change their existing configuration.

[69] The Board summarized the distinctions between bargaining unit reviews under sections 18.1, 35 and 44 of the *Code* in *Viterra Inc.*, 2009 CIRB 465:

> [9] Section 18.1 of the *Code* establishes the regime for a bargaining unit review. A trade union or an employer can ask the Board at any time for a review of bargaining units under section 18.1(1). However, to obtain a review, an applicant must first convince the Board that the current bargaining units "are no longer appropriate for collective bargaining": *Expertech Network Installations Inc.*, 2002 CIRB 182 at para. 108.
>
> [10] The threshold is lower following a single employer declaration under section 35 or a sale of business declaration under section 44. The Board may intervene to conduct a review without a party having to demonstrate that the existing bargaining units are no longer appropriate for collective bargaining: *Expertech Network Installations Inc., supra*, at para. 109.

[70] Accordingly, the threshold is different and lower in cases of a sale of business or a single employer declaration than in those cases where a party applies for a review under section 18.1 of the *Code*. The Board has considerable latitude to intervene after a sale of business or a finding of single employer if it determines that the circumstances warrant it.

[71] More specifically, following a sale of business, the Board's objective is to ensure the optimization of the bargaining unit structure to promote stable and harmonious labour relations. It will consider various factors in its assessment, including the history of bargaining, the interests of the employees in the various bargaining units and the nature of the work that they perform (see

CN 563; *Sécur Inc.*, 2001 CIRB 109; *Island Tug and Barge Limited and Canadian Merchant Service Guild*, 2001 CIRB 112; and *Expertech Network Installations Inc.*, 2002 CIRB 182). Certain factors, such as evidence of organizational change and the intermingling of employees, may make it obvious that the existing structure requires review. In addition, the Board will consider whether there is a bargaining unit configuration that is more likely to lead to harmonious labour-management relations.

[72] When deciding whether to issue a single employer declaration under section 35 of the *Code*, the Board considers whether there is a labour relations purpose to be served by doing so. In deciding whether to exercise its discretion, the Board considers the remedial purpose of section 35 of the *Code*, which is to prevent the erosion or undermining of bargaining rights through corporate arrangements or reorganizations (see *S.V.N. Enterprises Ltd., doing business as S & K Trucking*, 2003 CIRB 219). The Board has also stated that, in the context of an application for a declaration of single employer, it may assess whether rationalizing bargaining units is necessary to ensure sound labour relations and prevent inter-unit conflicts (see *Air Canada*, 2000 CIRB 78).

[73] It is with these principles in mind that the Board now turns to the facts in the present case.

B. Application to the Present Matter

[74] The TCRC invites the Board to review the bargaining unit structure and to declare that the running trades employees are to be included in one consolidated unit. It argues that CPKC controls and manages the work at CMQR and that the level of operational integration between the two entities as well as the overlap in work assignments in the St. Luc and Lachine, Quebec, yards justify rationalizing the bargaining units for running trades to ensure sound labour relations.

[75] In response, the other parties take the position that CMQR operates as a separate and distinct rail operator and employer. They argue that there is no need to review the bargaining unit structure as there is no evidence of labour relations problems that need to be remedied. They contend that the TCRC is seeking to assert bargaining rights over a distinct group of employees without properly organizing them and obtaining their support.

[76] In the Board's view, there is sufficient evidence to persuade it that rationalizing the bargaining unit structure is necessary to ensure harmonious labour relations and promote stability in the bargaining relationships.

1. Overlap of Work and Assignments

[77] CMQR's witness stated generally that CMQR's and CPKC's running trades employees worked separately and distinctly. CPKC's witnesses denied that changes had occurred on the ground since the acquisition of CMQR and took the position that operations at both CPKC and CMQR remained separate and stable.

[78] At the hearing, however, evidence was presented that showed changes in the work of CMQR running trades employees in the CPKC yards in St. Luc and Lachine. It is apparent that since the acquisition of CMQR, the presence of CMQR running trades employees in the yard has increased, and, in some cases, they are performing the work of TCRC members.

[79] The Board acknowledges that prior to 2013, crews from QSR or MMA (CMQR's predecessors) came to the St. Luc yard. It was stated that in or around 1997 and 1998, QSR had a terminal in Montréal, Quebec, at the St. Luc yard (a rented space from CPKC) where it stored containers and from which it serviced a client. QSR had crews working in the yard at that time. This was shortly after CPKC divested itself of the Eastern short lines.

[80] When MMA acquired QSR's assets in or about 2003, changes were made to the work routes. As Mr. Daigle explained, crews would then start their workday in Farnham, proceed to the St. Luc yard and then return to Farnham. The network also expanded, with MMA making trips to Jackman, Maine, and Lac-Mégantic. However, MMA did not have a terminal at the St. Luc yard, and the boundary between MMA and CPKC at that time was established at Mile 20 (in Iberville, Quebec). Switching or interchanging MMA rail cars occurred at or around Iberville. Consistent with Mr. Daigle's evidence, Mr. Psichogios described MMA's work at St. Luc as "pick-up and go," meaning that the crews would come into the yard to hook an already-built train or rail cars and leave. MMA crews did not perform any switching work at the St. Luc yard.

[81] After the Lac-Mégantic tragedy in 2013, CMQR acquired MMA's assets and changes were made to the route so those crews would no longer come to the St. Luc yard. Mr. Daigle testified

that between 2013 and 2020, CMQR did not operate at all between Iberville and St. Luc. He further indicated that CPKC began doing the switching work that had previously been done by MMA crews between the St. Luc yard and Iberville.

[82] There was no evidence that, throughout these various periods, QSR, MMA or CMQR crews went to the Lachine yard at any time prior to the acquisition in 2019.

[83] Since the acquisition in 2019, CMQR trains are now coming to the St. Luc yard. CMQR crews are also making their way to the Lachine yard (CPKC's intermodal yard) to pick up rail cars.

[84] Mr. Psichogios explained that although another rail company runs trains in and out of the St. Luc yard (the Quebec-Gatineau Railway), it has two separate tracks and does not perform switching work. He also described this company's operations as "pick-up and go." This evidence was uncontradicted.

[85] Mr. Psichogios also explained that when MMA came to the St. Luc yard prior to 2013, it was similarly to drop off or pick up rail cars, nothing more. The different crews did not interact during that time, and MMA crews did not perform any switching in the yard. However, Mr. Psichogios indicated that since the acquisition, there are combinations of work being performed by CMQR crews that were previously performed by TCRC members. He recounted his observations of CMQR crews switching and lifting cars to build their trains (train 120). This was not contradicted.

[86] TCRC members reported specific incidents to Mr. Psichogios of CMQR crews performing work related to switching and building trains. One such incident occurred on July 11, 2023, related to CMQR train G27. Another incident occurred on September 15, 2023, where the CMQR crew from train 121 remained at the terminal in St. Luc to assist in switching and building CMQR train 120. Although these members did not testify directly about these incidents, there is no reason to discount their written reports to Mr. Psichogios. As their local union representative, it would be expected that members would advise Mr. Psichogios of concerns related to their work jurisdiction.

[87] In addition, Mr. Psichogios provided a track profile of the St. Luc yard that points to additional incidents on March 5 and 6, 2023, where CMQR crews were involved in moving rail cars in the yard, work that would normally be assigned to CPKC crews. Mr. Psichogios reported his concerns with work assignments to CPKC management, without resolution.

[88] This evidence was also consistent with Mr. Daigle's testimony as it related to the assignment of work in the St. Luc yard since 2020. He indicated that since the acquisition, he regularly goes to the St. Luc yard to drop off and pick up trains. When in the yard, instructions are given by the CPKC trainmaster, who directs crews on which rail cars to lift or move. Mr. Daigle indicated that on some limited occasions, he and his CMQR crew were directed to move CPKC rail cars to access theirs and build their train.

[89] Recognizing that this was known to be TCRC work, Mr. Daigle attempted to raise these issues with management, which, in turn, responded that the cars belonged to CMQR. Mr. Daigle knew this to be untrue but candidly acknowledged that there are no parameters around the work that CPKC managers can direct CMQR running trades employees to perform. Mr. Daigle explained that there are no provisions in the USW collective agreement that would allow him to refuse the work or to grieve its allocation when it involves another entities' rail cars. Although he testified in his second language, his explanation regarding the assignment of work at the St. Luc yard was clear and well understood.

[90] CPKC's evidence in this regard was less clear or convincing. Mr. Hare initially stated that each corporate entity was responsible for lifting and moving its own rail cars in the St. Luc yard. More specifically, he indicated that crews are responsible for set-offs, lifts, switching and kicking off orders for their respective trains. As such, CPKC crews moved their own cars while CMQR crews would move theirs and the Quebec-Gatineau Railway would do the same. He also indicated that since the acquisition, the interchange for CMQR trains has been brought to the St. Luc yard, (from Iberville) and CMQR crews can now get their cars from Lachine to move to Farnham.

[91] In cross-examination, however, Mr. Hare asserted that CMQR crews do not perform train switching in the St. Luc yard and would only drop off or lift their trains, contradicting his earlier statements. He also conceded that he had no first-hand knowledge of the work performed by CMQR crews at the St. Luc yard prior to 2019. On these issues, the Board prefers the evidence of Messrs. Daigle and Psichogios, as described above.

[92] It is true that there was no evidence of CMQR and CPKC crews intermingling. However, based on the evidence, it is fair to say that the jurisdictional lines in the assignment of work are easily and increasingly blurred with the operational changes that have occurred since CPKC acquired

CMQR in 2019. The running trades employees work side by side in the St. Luc yard, performing the same functions and moving rail cars interchangeably while being overseen and directed by the same CPKC managers. In the Board's view, there is a clear indication of functional encroachment between the two units that merits attention.

[93] It is also true that there was no evidence of layoffs among running trades employees working at CPKC due to the changes involving CMQR and the assignment of work at the St. Luc yard. The TCRC witnesses all confirmed that no TCRC members had been laid off and recognized that CPKC was seeking to hire additional running trades employees. However, Mr. Psichogios did provide evidence that TCRC locomotive engineers on the spareboard remained unassigned while CMQR crews performed switching work. Concerns relating to this were conveyed to CPKC management on July 12, 2023, again without resolution.

[94] The Board considers that the overlapping of work between the running trades employees and the increased operations of CMQR on CPKC tracks and yards weigh in favour of consolidating these groups of employees.

2. The Organizational Structure: The Two Entities Do Not Operate Separately and Distinctly

[95] CPKC and CMQR contend that they continue to operate as distinct and separate entities and employers. In effect, the Board was not persuaded that this was the case, as several facts point to the contrary.

[96] When CPKC publicly announced its acquisition of CMQR in November 2019, it referred to an "end-to-end transaction [that] will provide CP customers with seamless, safe and efficient access to ports at Searsport, Maine and to Saint John, New Brunswick… thereby preserving and enhancing competition." There is no doubt that the acquisition permits CPKC to operate a seamless operation and rail network for the benefit of its customers.

[97] It is also telling that when CMQR and the USW renewed their collective agreement in 2022, it was announced by CPKC through a news release in the following terms:

> Canadian Pacific (TSX:CP) (NYSE:CP) announced today three collective bargaining agreements have been ratified **by employees of CP's** Dakota, Minnesota & Eastern (DM&E) South; Central Maine & Quebec (CMQ) U.S. and **Central Maine & Quebec Canada** subsidiaries.

…

> "CP welcomes the ratification of these three recently negotiated agreements that bring wage increases to hundreds of our dedicated employees," said Mark Redd, CP Executive Vice-President Operations. "**We continue to work productively with all of our union partners to achieve long-term agreements that meet the needs of CP's growing business** and our industry-leading railroaders."
>
> Major **CP crew bases that fall under the agreements include** Ottumwa, Davenport, Marquette and Mason City, Iowa; Kansas City, Mo.; Savanna, Ill.; Brownville Junction, Maine; and **Farnham, Que**. **CP is hiring for various positions at all of these locations** in 2022, with immediate openings.
>
> (emphasis added)

[98] These statements by CPKC leave little doubt that it presents itself as the employer of those working for its subsidiaries, including CMQR.

[99] CPKC submits that its personnel provide services to CMQR by virtue of the Engineering, Mechanical and Legal Services Agreement (as amended) and the Master Run-Through Agreement. The Board attentively reviewed these agreements and observes that they cover quite a broad range of services that are performed by CPKC on behalf of CMQR. They include all day-to-day freight rail operations, the design, planning and execution of railway track engineering and related work on railway track infrastructure as well as the inspection, repair and maintenance of rail cars. They also include the provision of legal advice and related services and the management of labour relations, benefits and pensions and encompass hiring, training, retention and management of employees "necessary to support the operations of CMQR." The service agreement (at Schedule B) provides a list of individuals authorized to give instructions to CPKC on behalf of CMQR. The first individual on the list is Mr. Keith Creel, the Chief Executive Officer and President of CPKC.

[100] At the hearing, the evidence showed that all matters related to employment or labour relations at CMQR are handled and managed by CPKC labour relations personnel. For example, the Director of Labour Relations at CPKC responds to and schedules CMQR grievances without distinction from CPKC grievances. CPKC personnel manage the hiring functions as well as disability or accommodation issues emanating from CMQR employees. In fact, the Board was not

presented with any information from CMQR management personnel who were not otherwise managers with CPKC.

[101] It was also shown that CPKC personnel attend the occupational health and safety meetings of CMQR as employer representatives. Accident and injury reports and bulletins are published by CPKC and include CMQR data. There is no separate occupational health and safety department at CMQR that is responsible for these matters. The collective agreement and letters of understanding between CMQR and the USW are signed by Mr. Myron Becker, the Chief Labour Officer at CPKC.

[102] The Board received photos of buildings and signage in Farnham, Lennoxville and Sherbrooke, Quebec. The individual who took the pictures was called to testify and cogently described the environment and circumstances under which he had taken the photos that show the CPKC logo on what is labelled by the CPKC as CMQR property. The photos also show that the traffic gates on the CMQR rail line have placards that refer the public to the CPKC police service for information or reporting.

[103] Further, CMQR employee badges contain both a CPKC logo and a CMQR logo, and their pay statements are sent from CPKC's mail server. Since the acquisition, CMQR employees (locomotive engineers and conductors) are regularly trained together with CPKC employees at the St. Luc yard or at CPKC's headquarters in Calgary, Alberta.

[104] Although the Board accepts that corporate entities are free to enter into legitimate service agreements, in this case, the breadth of the agreements and the extent of the services provided by CPKC make for an artificial distinction between the two entities. Simply put, it is CPKC that manages all aspects of the rail operations as well as all employment and labour relations matters at CMQR, albeit under the guise of the service agreement.

[105] In the Board's view, the very purpose of sections 35 and 44 of the *Code* is to lift the veil on these corporate arrangements to examine their true nature and their impact on bargaining rights and bargaining units.

3. Community of Interest and the USW Collective Agreement

[106] Another factor that the Board examines is the shared interests among employees to assess whether a rationalization of the bargaining units would promote sound labour relations.

[107] In this case, the USW and Mr. Daigle, in particular, highlighted the particular interests of the employees covered by the USW collective agreement. Most of these employees are francophones, and some chose to work at CMQR for the possibility of living within commuting distance of their base terminal. Mr. Daigle indicated that he and his fellow workers do not want to join the bargaining unit at CPKC as they are concerned about the language of work and the prospect of being displaced or laid off due to being in a larger unit. They also apprehend the potential of having to relocate to Montréal, closer to CPKC's terminal.

[108] The unit of employees represented by the USW is an all-employee unit that includes not only running trades employees but also engineering, signals and mechanical employees. The collective agreement and a letter of understanding dated July 28, 2022, between CMQR and the USW provide for a master seniority list allowing employees to bid on jobs in any "department" based on their seniority, regardless of whether they work in that department. Mr. Daigle explained that this allows employees in the bargaining unit to try different jobs or move to another job that better accommodates their home life. He provided specific examples of such employee mobility within the bargaining unit.

[109] At the hearing, there was also evidence of employees moving from one corporate entity to the other. The Board understands that the employees who transferred were required to resign from CPKC and joined CMQR as new employees, or vice versa. In one case, an employee was transferred from CMQR to CPKC for the purpose of a workplace accommodation. These transfers were facilitated by CPKC management, which, as was seen above, provides all labour relations services to CMQR. Despite the two entities claiming they are separate, it is apparent that running trades employees can easily move between the two entities as they are managed by the same personnel, perform the same work on the same rail network and have the same qualifications and training.

[110] Separate collective agreements govern the terms and conditions of employment for the running trades employees of CMQR and CPKC. It is difficult to do a line-by-line comparison of the two collective agreements in terms of pay and benefits provided to employees. The USW agreement (with CMQR) covers a small group of about 50 employees, while the TCRC agreement (with CPKC) covers some 2,000 running trades employees, and the rights and benefits have evolved separately.

[111] However, it is apparent that for running trades employees, wage rates at CMQR are generally lower than those in the TCRC collective agreement. One can compare the wage rates contained in the USW collective agreement at article 10 with those found at article 1 of the TCRC agreement. Hours of work differ as well, as do the additional allowances that are added to wage rates in the TCRC agreement.

[112] Having reviewed the terms contained in the two collective agreements, it is fair to conclude that the same work performed by running trades employees under the USW agreement costs less than if it is performed under the TCRC agreement. This can benefit CPKC and incentivize it to allocate the work in a manner that reduces costs. As demonstrated above, this is already occurring in the St. Luc and Lachine yards.

[113] Despite the ability of CMQR running trades employees to move to another department as a measure to avoid layoff, those opportunities can be limited by the size of the unit. The Board notes that, at the time of the hearing, there was only one employee in the mechanical department, five in the signal department and 12 in the engineering department while there were 33 in the running trades. Seniority-based rights to promotion, to transfers or to avoid layoff may be limited in a small bargaining unit while they can mean much more to an employee within a larger unit or, as in this case, within a larger seniority district. It is generally recognized that employee rights under a collective agreement may be more valuable in a larger, multi-location bargaining unit.

[114] The Board recognizes the current geographic specificity of the terms and conditions of employment for CMQR employees, but it is of the view that this is outweighed by the broader community of interest shared by running trades employees who work together, sometimes interchangeably and without clear distinctions, as part of a national and integrated rail network operation. A broader bargaining unit does not necessarily preclude employee choice as it relates

to location of work and lifestyle. The Board is persuaded that in the circumstances of this case, there is a labour relations purpose to be served in ensuring the commonality of employment conditions for all running trades employees to ultimately enhance administrative efficiency, employee mobility and labour stability.

4. Grievance Arbitration and Industry Practice

[115] The USW argues that, to the extent that there are incidents of wrongful assignment of work between the two bargaining units, those can be addressed through the grievance process. It points to the fact that the TCRC has filed two grievances related to these issues, in addition to the present application with the Board. Both CPKC and CMQR also take the position that the assignment of work is not a significant issue and should be dealt with at grievance arbitration.

[116] The Board is of the view that, in this case, the dispute should be decided by the Board and not simply deferred so that it can be addressed through grievance arbitration. Although a one-off jurisdictional dispute can be properly addressed through grievance arbitration, in this case, the issue is broader and is the direct result of the operational changes implemented after CPKC's acquisition of CMQR. The TCRC has raised the jurisdictional issue with management and through two grievances, without resolution. There is sufficient evidence to demonstrate that there are labour relations issues persisting between the parties. When jurisdictional issues arise as a direct consequence of corporate changes following an acquisition, it is an important factor to consider when assessing the appropriateness of the existing bargaining unit structure.

[117] The USW also cites the Board's decisions in *CN 563* and RD 594 where the Board, based on the fact that the parties had been unable to renew the collective agreements for the short lines, agreed to review the bargaining unit structure but then decided to maintain a separate unit for running trades employees for one short line railway as they were represented by a separate bargaining agent. The relevant excerpt from RD 594 states the following:

> [20] In this case, there are two short line bargaining units that are represented by a different bargaining agent than those representing the same trades or crafts at the main line: the running trades employees at SAR and the maintenance of way employees at MKNR. In the circumstances of this case, where the global review of the bargaining unit structure at CN's Alberta short lines came about because of three separate, discrete applications for limited orders affecting specific bargaining units consequent to a sale of business, and the two bargaining units in question have current collective agreements in place, the Board is prepared to leave these two bargaining units

> undisturbed for the time being. While this constitutes an exception to the general principle that employees performing the same work should be in the same bargaining unit, it respects the right of these employees to continue to be represented by the bargaining agent of their choice. In the event that the employees in either or both of these two small short line bargaining units indicate a desire to join the main line bargaining unit, the Board will entertain an application pursuant to section 24 of the *Code* at the appropriate time.

[118] At that time, the Board decided to maintain a separate bargaining unit for the groups represented by a different bargaining agent but noted that this constituted an exception to the general principle.

[119] Ten years later, the Canadian National Railway Company (CN) filed an application for review of the bargaining units pursuant to section 18.1 of the *Code* seeking a consolidation of all running trades employees into a single bargaining unit. The trade union representing the separate bargaining unit at the Savage Alberta Railway objected to its bargaining unit being folded into the TCRC's national unit of running trades employees. The Board ultimately granted the application and consolidated all running trades employees in a single bargaining unit, citing the similarities in the duties performed by the employees, mobility between the units, the employer's operational structure, the size of the bargaining unit relative to the larger unit and the Board's general preference for broader-based units. It did so while recognizing the opposing union's successful representation of the separate bargaining unit (see LD 4829).

[120] As the series of cases involving CN demonstrates, the acquisition of formerly owned short lines is not unique to CPKC. The Board has recognized that there is a community of interest among running trades employees and an established practice in the rail industry of favouring all-encompassing bargaining units for them.

[121] In the Board's view, similar considerations that favour a consolidation are present here given the similarity in the work, training, qualifications and integration of the rail network operation. A consolidation of former short lines employees also aligns and is consistent with the bargaining unit pattern in the railway industry.

5. The Board Decisions Cited by the Parties

[122] Each party cited a number of Board cases that appear to support their respective positions, some in which the Board granted the application for review and others in which the Board declined

to do so. The Board has dealt with multiple cases over the years concerning bargaining unit reviews under different circumstances. It does not intend to review all the cases cited in the present matter.

[123] What clearly emanates from the case law is that the Board considers each case on its own merits, examining the particular circumstances at play and determining what, ultimately, makes labour relations sense. Determining bargaining unit structures is one of the Board's core responsibilities in exercising its statutory discretion. No two cases are the same, and the outcomes will vary depending on the weight given to different factors that are more or less relevant depending on factual context.

[124] The Board will only review a few of the cases cited by the parties as a demonstration of this specificity.

[125] In *G4S Secure Solutions (Canada) Ltd.*, 2012 CIRB 625 (*G4S Secure Solutions*), the Board was dealing with a number of certification applications related to security screening services at 21 airports in British Columbia and Yukon. After a change of contracts, the unions that had previously represented the employees at these airports sought to be certified to represent similar bargaining units with the new employer. The employer objected to the separate certification applications and asked the Board to consolidate all the groups into one bargaining unit comprising all security screening services at the 21 airports.

[126] The Board considered the community of interest among the employees and found that this factor weighed against grouping together all the airports, mainly because of their geographic dispersion and the fact that there was no mobility of employees between them. It also considered the fact that the interests of employees at one airport (in Vancouver, British Columbia) would consistently overwhelm the interests of employees at all the other smaller airports.

[127] The facts are not the same in the present matter. First, in *G4S Secure Solutions*, the Board was not engaged in a bargaining unit review. Rather, it was addressing several applications for certification respecting security screeners at various airports in British Columbia, and access to collective bargaining is a significant factor in such matters.

[128] Second, the factual context in the present matter is quite different. The running trades employees work side by side and perform the same work in the same location at the St. Luc or Lachine yards for the purpose of moving freight on an integrated rail network. There is evidence of mobility of employees between the two entities despite the corporate barriers that may be in place. Although concerns were expressed around the language of work and the ability to service francophone employees, the Board was reassured with concrete examples of the TCRC's ability to represent francophone members. As discussed above, the Board is also of the view that the rights of employees will be enhanced by a common framework of working conditions.

[129] In *United Airlines, Inc*., the Board was asked to review the bargaining unit structure following the merger of two airlines. After considering the various factors, including the commonality of interests of employees at each airport, their lack of mobility between airports and the successful airport-based bargaining, the Board maintained an airport-based structure and refused to consolidate all bargaining units across Canada into a single unit. Consequently, it consolidated the separate bargaining units that existed at the Toronto Pearson International Airport and the Calgary International Airport.

[130] An assessment of the bargaining unit structure is very fact-specific. The Board accepts that in the present matter, the USW has been successful in negotiating successive collective agreements without a work stoppage. It is important to consider, however, the context in which the latest agreement was renewed. It is apparent that it is CPKC management that negotiated and ratified the USW agreement as the signatories to the agreement. The agreement was also announced publicly by CPKC and presented as meeting the needs of its growing business.

[131] At the same time, work is being performed by CMQR running trades employees in the St. Luc and Lachine yards that was previously performed by TCRC members under the TCRC collective agreement. What used to be "pick-up and go" work for CMQR crews has expanded to switching and building trains on the same tracks as CPKC trains and without distinction from the TCRC crews' work, despite the different terms and conditions of employment that apply to each group of running trades employees.

[132] In this context, the Board cannot consider the successful renewal of the collective agreement at CMQR in isolation without considering the circumstances as a whole.

[133] In *Kindersley Transport Ltd. and Quill Transport Ltd*., 2008 CIRB 409 (*Kindersley*), the Board concluded that there was no labour relations purpose to be served by issuing a single employer declaration, as it had not been persuaded that there was an erosion of or an adverse effect on the union's bargaining rights. It stated the following:

> [53] The Board has carefully examined the CEP's contention that, because some Quill drivers do the same work as Kindersley drivers, its bargaining unit needs to be rationalized to include the Quill drivers in order to protect its bargaining unit from lay-offs and to promote the growth of the unit. Despite the union's valiant effort in this case, the Board is not satisfied that there has been an erosion of or an adverse effect on the CEP's bargaining rights, or that those rights are currently at risk. The evidence presented by the union does not satisfy the Board that labour relations problems or bargaining unit conflicts have resulted from the April 2006 reorganization.
>
> [54] The uncontested evidence establishes that no drivers have been laid off since the reorganization and that there is, in fact, a shortage of drivers. In his testimony, Mr. Siemens explained that it was easier to get new clients than it was to find drivers to meet its clients' demands. This is confirmed by the fact that in 2006–2007, Kindersley posted numerous drivers positions.

[134] In the present matter, the Board accepts that TCRC members have not been laid off and that CPKC was hiring at the time of the hearing. However, the Board also found that the work is interchangeable in the St. Luc yard and that jurisdictional lines in assigning work between the two bargaining units are increasingly blurred, leading to loss of assignments for TCRC members. These considerations are different than those in *Kindersley* but are nonetheless important and sufficiently persuasive for the Board to review the bargaining unit structure in the face of corporate changes.

[135] In *A.S.P. Incorporated*, 2010 CIRB 546, the Board was seized with an application under section 18.1 of the *Code* to consolidate two bargaining units of employees providing airport security services—one at Toronto Pearson International Airport and the other at Toronto City Centre Airport (now Billy Bishop Toronto City Airport). The evidence demonstrated that the employer had structured its operations to allow for resources to be centralized and shared, including management functions, human resources and payroll between the two locations. In this context, the Board concluded that the separate collective agreements impeded workforce mobility and reduced employees' ability to exercise their seniority rights on a broader basis. It also found that the employees shared a community of interest in that they performed essentially the same work at the two locations, requiring the same skills and qualifications.

[136] The Board notes that in *A.S.P. Incorporated*, the parties agreed that a merged bargaining unit would promote sound labour relations and facilitate collective bargaining. However, the Board still satisfied itself that the higher threshold for a bargaining unit review under section 18.1 of the *Code* had been met.

[137] In that decision, the Board also referred to *Canadian Broadcasting Corporation*, 2003 CIRB 253, where the Board stated that while compelling reasons must be demonstrated for it to review the bargaining unit structure, it is not required to wait until problems in the bargaining relationship become serious and intolerable before it can find that the existing structure is no longer appropriate (see paragraph 24).

[138] Similarly, in the present case, some of those same factors are present, with the centralization and sharing of various services, the shared interests of running trades employees and the overlap and encroachment of work between them, leading the Board to conclude that the bargaining unit structure should be rationalized to address labour relations issues that have been identified and to optimize its functioning within the corporate structure.

[139] These are only a few of the cases cited by the parties. As discussed in *BCT.Telus* (at paragraph 17), the Board considers the context of each case as a whole and assesses different factors, giving them different weight and significance, with the objective of ensuring the proper functioning of a bargaining unit structure.

IV. Conclusion

[140] When considering the corporate arrangements holistically and the various factors and labour relations aspects in the present matter, the Board concludes that they weigh in favour of reviewing the bargaining unit structure. There is sufficient evidence to persuade the Board that the changes that have occurred since CPKC acquired CMQR require its intervention to ensure that the bargaining unit structure remains conducive to sound labour relations.

[141] The Board is mindful of the fact that a bargaining unit review will have implications for all employees in the USW bargaining unit. A carve-out of running trades employees from the unit currently represented by the USW would result in a smaller unit of employees. The Board also recognizes that some employees may not agree with this decision. However, despite the specific

local aspects of the USW bargaining unit, the Board concludes that there are broader interests in consolidating and ensuring a level playing field and harmonizing working conditions for what is essentially the same work on the same network for the same corporate organization.

[142] The Board therefore remits the issue to the parties pursuant to section 18(2) of the *Code* and allows them until May 29, 2026, to consider options and come to an agreement with respect to the bargaining unit structure and any questions arising from the review.

[143] The Board asks the union (TCRC) to provide it with a status update by **May 29, 2026**, and to identify outstanding issues, if any, requiring the Board's intervention.

Ginette Brazeau
Former Chairperson