

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "PBA")*;

AND IN THE MATTER OF the Spar Aerospace Limited Pension Plan for Employees Represented by CAW Local 112, Registration No. 0549501 and the Spar Aerospace Limited Pension Plan for Employees Represented by CAW Local 673, Registration No. 0549519 (the "Plans");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

B E T W E E N:

CAW-CANADA AND ITS LOCALS 112 AND 673

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES and SPAR AEROSPACE LIMITED

Respondents

BEFORE:

Elizabeth Shilton
Member of the Tribunal and Chair of the Panel

Colin McNairn
Chair of the Tribunal and Member of the Panel

Shiraz Bharmal
Member of the Tribunal and of the Panel

ORDER

WHEREAS THE APPLICANT CAW-CANADA AND ITS LOCALS 112 AND 673 (the "Union") requested that the Superintendent of Financial Services (the "Superintendent") declare partial wind ups of the Plans;

AND WHEREAS the Superintendent declined to order such partial wind ups;

AND WHEREAS the Union requested a hearing before this Tribunal pursuant to subsection 89(8) of the *PBA* with respect to the Superintendent's refusal to order partial wind ups;

AND WHEREAS the respondent Spar Aerospace Limited ("Spar") was granted party status by this Tribunal;

AND WHEREAS the Superintendent and Spar brought preliminary motions challenging the jurisdiction of this Tribunal to determine whether the Superintendent should be directed to order partial wind ups of the Plans, which motions were denied by this Tribunal;

AND WHEREAS the parties have entered into Minutes of Settlement with respect to this proceeding;

NOW THEREFORE having read the Minutes of Settlement entered into between the parties and having heard the submissions of counsel for the parties this day, the Tribunal orders that:

1. The Superintendent by order require that the Plans be partially wound up;
2. The partial wind ups of the Plans shall cover all members of the Plans who ceased employment during the period between January 1, 2003 and June 30, 2007 (and for further clarification, this coverage shall include employees who retired during this period and / or were indefinitely laid off during this period);
3. The effective date of the partial wind ups shall be June 30, 2007, but individual entitlements shall be determined as of the individual's termination date and the effective date will only be used to compute the overall positions of the Plans;
4. This Order shall be without prejudice to Spar's right to appeal with respect to the issue of whether the Plans are subject to Ontario or Federal pension law and supervisory authority (the "Constitutional Issue");
5. This Order shall be stayed pending a determination of Spar's appeal in the Divisional Court with respect to the Constitutional Issue. Spar shall not be required to file partial wind up reports or take any other steps towards implementing the partial wind ups unless and until Spar's appeal has been dismissed. But for greater clarity:
 - (a) Should Spar's appeal to the Ontario Superior Court of Justice (Divisional Court) (hereinafter the "Divisional Court") be dismissed, the stay of the operation of the partial plan wind up orders will cease, without prejudice to Spar's right to seek a further stay in the appropriate Court or Tribunal.

The fact of the consent of the Union to the initial stay shall be without prejudice to the Union's position in any subsequent stay proceedings;

- (b) Should Spar's appeal in the Divisional Court succeed, and thereafter be overturned by the Ontario Court of Appeal, the partial wind ups of the Plans shall proceed according to law;

- 6. There shall be no costs to any party with respect to any of the proceedings before this Tribunal relating to the Plans, conducted to date.

DATED at Toronto, Ontario, this 13th day of November, 2007

"Elizabeth Shilton"

Elizabeth Shilton

Member of the Tribunal and Chair of the Panel

"Colin McNairn"

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Chair of the Tribunal and Member of the Panel

"Shiraz Bharmal"

Shiraz Bharmal

Member of the Tribunal and of the Panel