

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101201

Docket: A-329-10

Citation: 2010 FCA 328

Present: NOËL J.A.

BETWEEN:

**XL DIGITAL SERVICES INC. doing business as
DEPENDABLE HOMETECH**

Applicant

and

**COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA**

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 1, 2010.

REASONS FOR ORDER BY:

NOËL J.A.

Federal Court
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REASONS FOR ORDER

NOËL J.A.

[1] This is a motion by XL Digital Services Inc. (the applicant) for a stay of an interim order of the Canadian Industrial Relations Board (CIRB) dated August 23, 2010. In the interim order, the CIRB certifies the Communications, Energy and Paperworkers Union of Canada as the bargaining agent for a unit comprising all employees of the applicant working in and out of London, Ontario, excluding managers and those above in rank of manager.

[2] In the application for judicial review filed against the interim order, the applicant maintains that the CIRB did not have the jurisdiction to issue it. It asks that this order be stayed pending the outcome of this application.

[3] In order for a stay to be granted, the applicant must demonstrate that there is a serious question to be tried, that it will suffer irreparable harm if the stay is not granted and that the balance of convenience favours the issuance of the stay (see *RJR-MacDonald Inc. v. Canada (Attorney General*, [1994] 1 S.C.R. 311).

[4] I assume for present purposes that the judicial review application raises a serious issue.

[5] With respect to the irreparable harm, the applicant contends that its business operations will be irreparably harmed because it will be required to disclose information concerning its business operations, some of which may potentially be confidential; to prepare and review bargaining committee proposals and agendas; to enter into negotiations and bargain in good faith with the union; and to submit to arbitration pursuant to section 36.1 of the *Canada Labour Code*, R.S.C. 1985, c. L-2, with regard to employee grievances.

[6] I can understand the applicant's frustration in complying with the order given its contention that it will be successful in overturning the decision of the CIRB. That said, a decision of the CIRB is, in principle, enforceable notwithstanding an application for judicial review. No doubt complying

with the decision will create inconveniences. However, the harm alleged falls substantially short of establishing irreparable harm.

[7] The application for a stay will accordingly be dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-329-10

STYLE OF CAUSE: XL DIGITAL SERVICES INC. doing
business as DEPENDABLE
HOMETECH v.
COMMUNICATIONS, ENERGY
AND PAPERWORKERS UNION
OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Noël J.A.

DATED: December 1, 2010

WRITTEN REPRESENTATIONS BY:

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Natalie Schernitzki

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