

NOVA SCOTIA COURT OF APPEAL

Citation: *Canadian Union of Public Employees, Local 933 v. Cape Breton (Regional Municipality)*, 2006 NSCA 80

Date: 20060629

Docket: CA 249471

Registry: Halifax

Between:

Canadian Union of Public Employees, Local 933

Appellant

v.

Cape Breton Regional Municipality

Respondent

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: March 24, 2006

Subject: Judicial review – standard of review of arbitrator interpreting collective agreement

Summary: An arbitrator ruled that in applying a re-opener clause, he could consider changes which had occurred before the current agreement had been signed provided that there were changes during the term of the current agreement that “crystalized” the grievance. A judge quashed the award because the arbitrator had unreasonably not given effect to the parties’ intentions. The union appealed.

Issues:

1. What was the standard of review?
2. Did the arbitrator make a reviewable error?

Result: Appeal allowed. The appropriate standard of review was patent unreasonableness, not reasonableness and the award

could not be said to be patently unreasonable. Even if the standard was reasonableness as the judge held, he erred in applying it because he substituted his view of the intention of the parties for that of the arbitrator. He ought to have asked himself whether the arbitrator's reasons provided any tenable support for the decision and not simply compared his own view of what the parties intended with the arbitrator's conclusion.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 pages.