CASE NO. VOLUME **PAGE**

Cite as: Dartmouth Police Association Local 191 v. Dartmouth (City), 1998 NSCA 217

THE DARTMOUTH POLICE ASSOCIATION LOCAL 191, OF THE POLICE ASSOCIATION OF NOVA SCOTIA

- and -

CITY OF DARTMOUTH

(Appellant) (Respondent)

C.A. No. 149135 Halifax, N.S. CROMWELL, J.A.

December 7, 1998 APPEAL HEARD:

December 17, 1998 JUDGMENT DELIVERED:

Labour Law - Amendments to Collective Agreement - Rectification SUBJECT:

SUMMARY:

The Union and the City signed a document amending the collective agreement by modifying the stated hours of work for officers in the Criminal Investigation Division (C.I.D.) and entitling these officers to stand-by pay from which they had previously been excepted. Several months after the document was signed, a grievance was filed by a C.I.D. officer claiming stand-by pay and the City's attention was directed to the fact that the change had the effect of entitling the officer to stand-by pay. The City commenced an action for rectification asking the Court to add words to the amendment making it clear that C.I.D. officers were not entitled to stand-by pay.

The trial judge found there had been a unilateral mistake by the City and awarded what he referred to as an "equitable optional remedy", whereby the Union, as the non-mistaken party, was required to elect between rectification, which would add the exempting words to the amended collective agreement or rescission, which would delete the whole amendment. The Union appealed.

RESULT: Appeal allowed.

> Where rectification is claimed, the fundamental question is whether the parties reached an agreement. On this fundamental question, the findings of the trial judge appeared to conflict or were, at least, unclear. In addition, there were other errors of fact. Taken cumulatively, the errors required appellate intervention. The Court concluded that there were insufficient clear findings on issues where there was conflicting evidence to allow it to substitute an order in place of that made by the trial judge.

A new trial was directed.

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