

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Lawton's Drug Stores Ltd. v United Food and Commercial Workers Union Canada, Local 864.*, 2015 NSSC 142

**Date:** 2015-05-12

**Docket:** *Hfx.* No. 438037

**Registry:** Halifax

**Between:**

Lawton's Drug Stores Limited

*Applicant*

v.

United Food and Commercial Workers Union Canada, Local 864

and

Labour Board (Nova Scotia)

*Respondents*

**Judge:** The Honourable Justice Michael J. Wood

**Heard:** April 22, 2015, in Halifax, Nova Scotia

**Oral Decision** April 22, 2015

**Counsel:** Robert G. Grant, Q.C. and  
G. Grant Machum, for the Applicant  
David C. Wallbridge, for the Respondent United Food and  
Commercial Workers Union Canada, Local 864  
Edward A. Gores, Q.C., for Labour Board (Nova Scotia)

**By the Court (Orally):**

[1] This is a Motion for an Injunction to restrain the Labour Board from issuing any further reasons in support of their decision and direction which was issued in this matter on March 26, 2015. The first notification to the Court and the other parties that an injunction was being requested was at the Motion for Directions which was scheduled for 11:00 a.m. today.

[2] The Judicial Review initiated by Lawton's challenges the decision and direction issued by the Labour Board on March 26 which directed the parties to resume collective bargaining with the assistance of a conciliator. The Labour Board said this was justified because Lawton's, as the employer, had taken uncompromising positions in the bargaining process.

[3] Subsequent to the Labour Board decision the parties resumed collective bargaining. I was advised they ultimately reached an agreement on April 19, 2015. Lawton's says the Labour Board should not issue any further reasons even though the March 26 decision and direction indicated they intended to do so. Mr. Gores, on behalf of the Labour Board, advised the Board expected to issue those additional reasons in early May.

[4] Mr. Grant, on behalf of Lawton's, says if no further reasons are issued by the Labour Board, his client will discontinue the Judicial Review and the matter will be concluded. He goes on to say there is no authority for the Board to issue reasons in the circumstances, although no specific case authority was cited for that proposition.

[5] According to Mr. Grant, the alleged deficiencies which would justify an order restraining the Labour Board from issuing further reasons are those that have already been raised in the Judicial Review to challenge the initial decision and direction.

[6] Although not expressed this way, I interpret Lawton's argument to be that if the initial decision is deficient for the reasons outlined in the Notice of Judicial Review, the decision should not have been issued in the first place and further reasons should not be given either.

[7] In support of the Motion for Injunction there are several examples of alleged harm advanced by Lawton's, although I note there was no affidavit evidence filed

that described any damage which might flow from the release of supplementary reasons. The harm alleged by Lawton's relates to the impact of further reasons on the relationship between Lawton's and the Union including administration of the current collective agreement and future bargaining that might be undertaken once it expires. Mr. Grant argues there could be a negative impact on that relationship if the Labour Board gives more detail of what it says was Lawton's improper position in the bargaining process.

[8] The positions of the Union and the Labour Board are similar. They both say there is no serious case to be tried, at least none made out by Lawton's, and they say Lawton's has produced no evidence of irreparable harm that would justify the granting of the interim injunction. They also say courts and tribunals often give a bottom line decision with reasons to follow.

[9] Dealing with the specific request for the interim injunction I would note that for such injunctions the strength of the case and the relative harm that may flow from it often blend together in the considerations of the Court. For example, the stronger the case on the merits the lower the threshold of harm that will be required to justify the granting of an interim injunction and vice versa; the greater the potential harm, the less the court will focus on the strength of the case.

[10] In this situation what I must consider on the harm side of the equation is the relative prejudice that may arise between now and any return date if an interim injunction is granted.

[11] With respect to the strength of the applicant's case the courts have used different terminology to describe it. In some cases it is described as an arguable case. Other times it is a strong *prima facie* case. It has been called a serious issue or described as a claim which is not frivolous. I do not put particular weight on which of those phrases is used. The strength of the applicant's case is a factor to be considered together with the potential harm that may be suffered.

[12] Although there are many examples of tribunals issuing decisions with reasons to follow, that is not the complete picture of the circumstances we are dealing with in this case. The underlying dispute relating to the frustrated collective bargaining process has been resolved. The Judicial Review challenges the Labour Board process as well as the basis for the original decision. If the proceeding continues to its conclusion and is resolved in favour of Lawton's, the outcome would be that the Board should not have issued the decision in the first instance.

[13] I am satisfied that the strength of the case advanced by Lawton's is sufficient that I should go on and consider the questions of potential harm and the balance of convenience.

[14] I accept there is a risk of harm to the bargaining process between Lawton's and the Union on a go forward basis, as well as the administration of the collective bargaining agreement, depending on what the Labour Board says about Lawton's behaviour. If the Board provides detailed examples of what it considers to be improper conduct, that may have an adverse impact on the ongoing relationship between the parties.

[15] The Labour Board and the Union have not identified any harm which might result from a relatively short injunction period to allow for a more fulsome hearing on whether the injunction ought to be continued.

[16] As a result, I am prepared to grant an interim injunction, however the return date will be set for the earliest date that suits the convenience and schedule of counsel for the Labour Board, the Union and the Court. I make that condition on the representation by Mr. Grant, that he or his firm would be available at any time convenient to the Court.

Wood, J.