IN THE SUPREME COURT OF NOVA SCOTIA
Citation: United Steel Workers of America v. Corbett, 2005 NSSC 45

Date: 20050224
Docket: 181723
Registry: Sydney

Between:

United Steel Workers of America

Applicant

- and -

Thomas Corbett, David Jenkins, John Gale, Melvin Covey, Duncan MacIntyre, Gus Postlewaite, Ralph Allen, Bernard Doucette, Francis MacEachern, The Estate of Gordon Dalton, Alex Kennedy, Adrain MacDonald, Wally Peters

Respondents

- and -

United Steel Workers of America, Local 1064

Respondent

Judge: The Honourable Justice Frank Edwards

Heard: February 7, 2005, in Sydney, Nova Scotia

Counsel: Gail Gatchalian for the applicant
Gary J. Corsano, Esq., for the respondents

By the Court:

[1] This is an application pursuant to CPR 14.25(1) and 5.04(2)(a) by the Defendant United Steelworkers of America to have pleadings struck as against it and to have it removed as a Defendant in the action commenced by the various Plaintiff Steelworkers against United Steel Workers of America, Local 1064 ("Local") and the United Steelworkers of America.

[2] The action arises from the claim of the Plaintiffs against both the Local and the International that each of them breached their duties of fair representation to the Steelworkers in failing to negotiate either of a severance or a pension for the Steelworkers upon the closure of the Sydney Steel Corporation ("Sysco") in 2000.

[3] ***Summary of Positions:*** The Defendant has taken the position that since the United Steelworkers of America (hereinafter referred to as the "Defendant International") is not the "bargaining agent" appointed pursuant to the Trade Union Act, it does not owe a duty of fair representation to the Plaintiffs who, at all material times, were employees of the Sydney Steel Corporation and members of the United Steelworkers of America, Local 1064.

[4] It is the position of the Plaintiffs that by virtue of the relationship between the Union Local and the Defendant International, as established by the Constitution of the Union, and by the actions of the Defendant International in representing and negotiating severance benefits on behalf of the members of Local during the closure of the steel mill, the Defendant International Union does owe a duty of fair representation to the Plaintiffs, notwithstanding that the International was not the "exclusive bargaining agent" appointed pursuant to the Trade Union Act.

[5] ***Statement of Claim:*** The Plaintiffs plead in their amended Statement of Claim the following provisions which allege the involvement of the International in bargaining severance rights for employees of the Sydney Steel Corporation during the course of its shutdown:

> "[18] The Constitution of International at all times material hereto required the International to be a party to all collective agreements and further to be a signatory to such collective agreements pursuant to Article XVIII Section 1 which reads:
>
> > 'The International shall be the contracting party in all collective agreements and all such agreements shall be signed by the International Officers.'"

[6] The Plaintiffs further plead:

> "[23] The Employer decided to close the Sydney Steel Plant and, with the Defendants, began to negotiate its closure in the

> year 2000. Representatives of both the Union and International actively participated in the negotiations resulting in agreements with respect to the severance and pension packages …"

[7] It is significant that the agreements referred to in paragraph 23 of the pleadings are between the Province of Nova Scotia (owner and operator of Sydney Steel Corporation) and United Steel Workers of America and its Locals 1064, 6537 and 1064-2. The International Union was a party and signatory to the agreements reached with respect to the closure of the Sydney Steel Plant.

[8] ***Law and Argument:*** It is clearly the position of the Defendant International that because the International is not the "exclusive bargaining agent" certified pursuant to an Order of the Labour Relations Board, it does not owe to the Plaintiffs a duty of fair representation.

[9] The Defendants rely on a number of cases which can be distinguished.

[10] ***Canadian Merchant Service Guild v. Gagnon***, [1984] 1 S.C.R. 509 and ***Gendron v. Supply & Services Union of the Public Service Alliance of Canada, Local 50057***, [1990] 1 S.C.R. 1298 are accepted authority on the principles of the duty of fair representation. However in neither case was the Court required to

either consider or determine the duty of fair representation that may be owed by a parent union, by virtue of its association with a local union, to the members of a local union. ***Bovaird v. Washburn***, [1997] N.B.J. No. 219 was not on all fours with the case at bar.

[11] In ***Re: Garcha*** [2000] B.C.L.R.B.D. No. 502 the complainants were members of I.W.A. Local 1-3567. The complainants were of the understanding that negotiations carried out by Local 2171 and I.W.A. Canada with the employer in relation to mill closures were to cover their rights as well, however the complainants were not included in the final agreement at all. They complained against both Local 2171 and I.W.A. Canada. The Board found that the complainants were not employees in a unit represented by Local 2171 or I.W.A. Canada. The Board also declined jurisdiction to entertain a complaint against I.W.A. Canada on the ground that it was not a "trade union" as defined in the Code. The jurisdiction issue aside, it would appear that I.W.A. Canada, in participating in negotiations with the employer and Local 2171 on mill closures were representing the members of Local 2171 - not 1-3567. The issue of whether any duty of fair representation would fall upon the national union if a complaint

was put forth by members of Local 2171 was not explicitly addressed or considered.

[12] In ***Romard v. Canadian Union of Public Employees*** (2000), 188 N.S.R. 2d 31 the plaintiff sought to include both CUPE National and CUPE Local 3264 in a breach of duty of fair representation claim.

[13] In considering whether CUPE National owed a duty of fair representation to the Plaintiff, Cacchione J., approached the issue as follows:

> "[37] In order to address this issue, it is necessary to determine what is the relationship between CUPE and CUPE Local 3264."

[14] Justice Cacchione then went on to reflect upon the Constitution and Bylaws of the national and local unions. The CUPE National was not a party to collective agreements, nor was it involved in negotiating such agreements. At para [59]:

> "The duty of fair representation is a duty which is owed by a Union to its members. This arises because of the exclusive power given to a union to act as spokesman for the employees in a bargaining unit…In the present case the Union involved is CUPE Local 3264 because it is this body and not CUPE National which represented the workers at Dartmouth Ambulance. It was Local 3264 which acted as the bargaining agent for the employees and which negotiated the terms and conditions of employment on behalf of those employees."

[15] The following facts as pleaded support a claim of a breach of duty of fair representation between the Plaintiffs and the Defendant International:

> 1. The Constitution which governs the relationship between the International and the Local, and provides the foundation for the establishment and conduct of the Local, requires that the International be a party to all collective agreements;
>
> 2. The International actively participated in negotiations between the employer with and on behalf of Local 1064;
>
> 3. The International is a party to the final agreements reached between the employer and the Locals with respect to the Plaintiffs' employment.

[16] ***Striking Pleadings and Removing Defendant International:*** An application to have pleadings struck out would normally succeed only if no cause of action was disclosed on the face of the pleadings. The test on an application to strike is: "assuming that the facts as stated in the statement of claim can be proved, is it 'plain and obvious' that the plaintiffs' statement of claim discloses no reasonable cause of action. (***Hunt v. Carey Canada Inc.***, [1990] 2 S.C.R. 959)

[17] It is not "plain and obvious" to me that the Plaintiffs' statement of claim discloses no reasonable cause of action against the Defendant International. That determination ought to be subject to a full analysis in light of all the evidence presented at trial.

[18] The Application is dismissed. The Plaintiffs/Respondents shall have costs in the event of $1,500.00 payable forthwith.

Order accordingly.

J.