IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Casino Nova Scotia v. Nova Scotia (Labour Relations Board), 2008 NSSC 251

Date: 20080605
Docket: SH 291348
Registry: Halifax

In the Matter of:

The *Trade Union Act*, R.S.N.S., 1989, c. 475

- and -

In the Matter of:

An Application by Casino Nova Scotia/Casino Nouvelle Ecosse for an Order to Quash and Set Aside the Decision of the Nova Scotia Labour Relations Board, dated January 18, 2008

- and -

Between:

Casino Nova Scotia/Casino Nouvelle Ecosse

Applicant

- and -

Nova Scotia Labour Relations Board and Service Employees International Union, Local 902

Respondent

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Judge: The Honourable Justice John D. Murphy

Heard: Special Time Chambers Application April 21, 2008, in Halifax, Nova Scotia

Written Decision: August 29, 2008
{Oral decision rendered June 5, 2008, Halifax, N. S.}

Subject: Judicial Review, Labour Arbitration

Summary: Employer, Casino Nova Scotia, sought order to quash and set aside Labour Relations Board decision which certified Respondent Union as bargaining agent for a unit consisting of all security department employees, including dual-rate security supervisors, at Casino in Halifax. Board had previously certified Respondent Union to represent a unit comprising the general personnel, other than security staff, at the Halifax Casino.

Issues: (1) What is the appropriate standard of review?
(2) Should the Board's decision be overturned on the basis that:
  (a) the security officers are not "employees" under the *Trade Union Act*;
  (b) the unit applied for was not appropriate for collective bargaining because the same union was already certified to represent a larger group of employees at the Casino;
  (c) Dual-rate security supervisors should be excluded from the unit?

Result: Application Dismissed.

Parties were in agreement, following **Dunsmuir v. New Brunswick**, that appropriate standard of review is reasonableness.

Contextual factors favour deference in this case - Board's conclusions are protected by privative clause, Board had responsibility to promptly and effectively resolve labour disputes and should not be faced with undue court intervention, employee status and bargaining unit appropriateness issues are fact specific and policy laden, and the Board had highly-developed expertise with respect to the questions under review.

Board's decision was justified, transparent, intelligible, and within an acceptable range of outcomes defensible with respect to facts and law.

Board's conclusion that security officers, including dual-rate supervisors, are employees and that the bargaining unit is appropriate for collective bargaining were supported by a reasonable analysis and represent an acceptable outcome. All issues raised by the Applicant were dealt with rationally by the Board. The Board referenced and assessed evidence, and absent a transcript of its hearing, the Court's role is not to re-weigh evidence or seek information to contradict Board's finding of fact.

There was no evidence to support the Employer's submission that a conflict would arise because a larger bargaining unit might exert improper influence, or that security officers' loyalty to fellow union members might interfere with their duty to the Employer. Principles in the case law supported dealing with any potential conflict by placing security guards in a separate unit of the same union.

It was not unreasonable for the Court to find, as an alternative basis for its conclusion, that it lacked authority under the *Trade Union Act* to refuse an application based on the identity of the Applicant Union, when the statutory conditions required for certification were met.