IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20090729
Docket: L090205
L090314
Registry: Vancouver

IN THE MATTER OF APPLICATIONS PURSUANT TO THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996, c. 244

Between:

Emergency and Health Services Commission

Applicant

And:

Ambulance Paramedics of British Columbia CUPE Local 873

Respondent

Before: The Honourable Madam Justice Adair

Oral Reasons for Judgment

In Chambers
July 29, 2009

Counsel for Applicant	G.R. Fraser L.J. Zivot
Counsel for Respondent Local 873	L.B. McGrady, QC L. Dennis
Place of Trial/Hearing:	Vancouver, B.C.

[1] **THE COURT:** This application has been brought on in the context of a labour dispute between the applicant, the Emergency and Health Services Commission, and the respondent the Ambulance Paramedics of British Columbia CUPE Local 873.

[2] The applicant's notice of motion was delivered this morning, together with a number of affidavits in support of the application. The notice of motion sought first of all that the applicant's application be heard on short notice. The Commission then sought relief by way of a contempt order against the Union and the notice of motion went on to particularize various aspects of what the Commission alleged were items of contempt.

[3] The notice of motion then requested relief either in addition or in the alternative. This relief, for example, was to the effect of seeking an order that the Union on its own, or through its executive and members, immediately cease and desist any communication to its members for the purpose of proposing that they not comply with certain orders, and/or for the purpose of dissuading, directing, encouraging, counselling or advising members not to comply with orders. Further, the Commission also sought an order that the Union take steps to post messages, communicating certain matters to the Union members, including directing members to make themselves available according to historical levels for certain events (including the Celebration of Lights) and to accept and work shifts for the remaining Celebration of Lights events, and sought various other items of relief.

[4] The application today arose against a background of an order that was made in urgent circumstances by the Labour Board on Friday, July 24, 2009. That order supplemented orders that were made by the Board May 15, 2009 and which were filed with the Court on May 15, 2009.

[5] The orders that were made on May 15, 2009 were essential services orders and the orders made by the Board on July 24, 2009 supplemented those essential services orders with respect to particular upcoming events.

[6] I am going to paraphrase what the Board ordered on July 24. The Board designated as essential, paramedic coverage at levels and in a manner directed by the employer (i.e., the Commission) for the following public events: first the Celebration of Lights on July 25, July 29 and August 1, 2009; secondly, the Pride Parade on August 2, 2009; third, the Saanich Fair, and although the date indicated in the Board's order is August 2, 2009, I am informed by both counsel that that date is incorrect and the correct date is in September; fourth, the Abbotsford Air Show, August 7 to 9, 2009; fifth, the Ironman Triathlon on August 30, 2009 in Penticton, Oliver, Osoyoos and Keremeos; and sixth, the Victoria Marathon, October 2009.

[7] The Board ordered secondly that in providing the essential services under its July 24 order the employer and the Union were specifically directed to ensure compliance with section 72(8) of the ***Labour Code***, and I will not bother quoting that section.

[8] Third, the Board ordered that to facilitate compliance with paragraph 2 of its order in respect of the Celebration of Lights event scheduled for Saturday, July 25,

2009 -- and it was that date only -- the employer and the Union were to be jointly responsible for scheduling sufficient qualified employees to ensure the provision and maintenance of the essential services designated in the order.

[9] Finally, the vice-chair, Mr. Adams, ordered that his order be filed in the Supreme Court of British Columbia and that was also done on July 24, 2009, at which point it became enforceable as an order of the BC Supreme Court.

[10] Because of the circumstances in which the application came on for hearing, the Union has not had the time or the opportunity to file affidavits in response to the Commission's affidavits. As a result, at present I have only the affidavit evidence of the Commission. I have been informed by counsel for the Union, Mr. McGrady, that the Union intends to file responding affidavit material and the Union will be taking issue with the story that is reflected in the Commission's affidavits.

[11] In the circumstances I granted the Commission's application to hear the motion on short leave, but only with respect to the relief that did not involve the application to find the Union in contempt. That part of the application has been left to be dealt with in accordance with the provisions of the Rules.

[12] That then left the Commission's application for alternative relief. In the course of his submissions, Mr. Fraser, counsel for the Commission, provided me with a form of order that set out the items of alternative relief that the Commission was now seeking. I will simply observe at this point -- and I do not intend any criticism of Mr. Fraser by saying this -- that the relief set out in the draft order was quite a bit different from the relief that was sought in the notice of motion.

[13] In any event, in its draft order, the Commission was asking that I order that a joint communication be issued, to come from the Commission and the Union, in the form of a draft statement that Mr. Fraser provided to me during the hearing. The Commission sought an order that the communication and whatever order I make today be delivered by e-mail by the Union to its members, essentially tracking the terms of substitutional service that was ordered by Mr. Justice McEwan on May 15, 2009. Mr. Fraser sought an order that the Commission would make available lists of employees to call for filling shifts pursuant to the essential services order made on July 24 and that the Union would make available sufficient members, as agreed between the parties, to make calls to members of the Union in order to fulfill the terms of the July 24 essential services order. Mr. Fraser sought an order that those activities would take place at the Commission's place of business. He also sought an order with respect to how people involved in complying with or performing those functions would be paid.

[14] In my view, what the Commission was seeking, in both its alternative relief in its notice of motion and in the provisions of the draft order that Mr. Fraser provided to me, were additional terms supplementing the order that had been made by the Labour Board on July 24.

[15] One of the issues that arose on the application is whether I had any jurisdiction to do what Mr. Fraser was asking me to do. Mr. Fraser was unable to cite any case authority on point, although he did refer me to the decision of Madam Justice Brown in ***B.C. Public School Employers Assoc. v. B.C. Teachers Federation***, indexed at 2005 BCSC 1443. I note that Madam Justice Brown's

decision was rendered in circumstances where she had already made a finding that the Teachers' Federation was in contempt of court.

[16] Nevertheless, Mr. Fraser argued that I had, as part of the court's inherent jurisdiction, jurisdiction to make the orders that he was seeking.

[17] Mr. McGrady, on the other hand, for the Union, argued that I had no jurisdiction. He pointed to provisions in Part 9 of the ***Labour Code*** and also cited Mr. Justice Williamson's decision in ***Diversicare Management Services Co. v. British Columbia Nurses Union***; [1994] B.C.J. No. 2480, which Mr. McGrady said was simply one of a number or many cases dealing with the question of the jurisdiction of the Labour Board as compared to the jurisdiction of the Court.

[18] I am not satisfied that in law I do have the jurisdiction to make the orders that the Commission is asking that I make today. Moreover, based on the submissions that I have heard this afternoon and the undertaking of the Union which I am going to get to in a moment, I have come to the conclusion that it is not necessary in the circumstances for me to make those orders.

[19] I am going to take the opportunity at this point to remind the Union and its members of the grave consequences of failing to comply with the terms of a court order. A court order must be obeyed until and unless it is reversed. In this case the orders that have been pronounced by the Labour Board and which are now effective as orders of this Court -- those are the orders dated May 15, 2009 and July 24, 2009 -- are effective orders of this court and must be obeyed. Refusal to obey court orders strikes at the heart of the rule of law and at the core of the organization of our

society. If court orders can be disregarded with impunity, no one will be safe. Our free society cannot be sustained if citizens can decide individually what laws to obey and what laws to disregard.

[20] The Court regards as extremely serious, as I said, a failure to abide by the terms of its orders.

[21] Mr. McGrady, counsel for the Union, has affirmed that his client, the Union, understands very well the seriousness of failing to comply with a court order, and that its members understand very well the seriousness of a failure to comply with a court order. During the course of the hearing I think I made it clear that I do not see it as being in either the Union's or its members' interests in the long term to fail to comply with the orders that have been made.

[22] The fact that some members of the Union may disagree or be unhappy with the terms of the orders that have been made will not be an excuse for failure to comply with those terms.

[23] In that light Mr. McGrady has confirmed that his client will undertake to issue a letter to the members of the Union in substantially the same terms as the letter that is found at Exhibit C to the affidavit of Randy Hansen sworn July 27, 2009, with the addition of those events that are listed and form part of the order that was pronounced on July 24, 2009, and correcting the date of the event in Saanich. I have been informed by Mr. McGrady and understand that that can be done this evening. I take it as implicit in the Union's undertaking that it will be done at the earliest possible, practical date.

[24] Therefore, on the Union's undertaking, I am refusing to grant the relief requested today by the Commission.

[25] I am going to seize myself of this matter, for the time being anyway, so that if there are any difficulties with respect to what I have ordered, or with respect to compliance by the Union with its undertaking, the parties can come back before me. I happen to be one of the on-call duty judges this week.

[26] Is there anything further that we need to deal with this afternoon?

[27] MR. FRASER: Perhaps a minor clarification, My Lady, whether you deem yourself seized of the contempt application itself should it proceed?

[28] THE COURT: I do not. Depending on when you may wish to resume with that application, assuming that you do, because of my rota for August, it might cause you some difficulty to have me seized. So I am not declining to hear it, but I am not seizing myself of the contempt application. It can be heard by any judge, including me.

E.J. Adair J.

Madam Justice E.J. Adair