

CANADA / JUDGMENT

Canada Labour Relations Board et al. v. Yellowknife

[1977] 2 SCR 729

COURT

Supreme Court of Canada

DECIDED

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Canada Labour Relations Board et al. v. Yellowknife

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Report

[1977] 2 SCR 729

Judges

Laskin, Bora; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Federal Court of Appeal

Subjects

Labour law

Decision Content

Supreme Court of Canada

Canada Labour Relations Board et al. v. Yellowknife, [1977] 2 S.C.R. 729

Date: 1977-03-08

Canada Labour Relations Board, Public Service Alliance of Canada Appellants;

and

City of Yellowknife Respondent.

1977: February 16 and 17; 1977: March 8.

Present: Laskin C.J., and Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Labour law—Trade Union—Certification—Municipal employees in Northwest Territories—Meaning of “federal work”—Canada Labour Code, R.S.C. 1970, c. L-1, ss. 1, 2, 27, 80, 108 and 109, 1972 (Can.), c. 18, Preamble—Northwest Territories Act, R.S.C. 1970, c. N-22, s. 13.

A certificate issued by the Canada Labour Relations Board to the Public Service Alliance of Canada as bargaining agent for a unit of employees of the City of Yellowknife was set aside by the Federal Court of Appeal on the ground that the Board had exceeded its jurisdiction in that the operations of the City were not a federal work or undertaking within the meaning of the Canada Labour Code.

Held: The appeal should be allowed.

Per Laskin C.J. and Judson J.: In viewing Part V of the Canada Labour Code historically and looking at the interlocking effect of ss. 108 and 109, it would be incongruous to declare a gap in the application of collective bargaining advantages to municipal employees in the Northwest Territories. In view of the all-encompassing legislative authority of the Canadian Parliament in the Northwest Territories there is no justification for assessing the scope of Part V of the Code in relation to the Northwest Territories in the same way as is done in relation to the provinces. Furthermore, the definition of “federal work” in the Code and especially s. 2(i) indicates that any doubt as to whether the federal statute is applicable to employees of a municipality organized in federal and federally administered territory should be resolved in favour of inclusion rather than exclusion.

Per Pigeon, Ritchie, Spence, Dickson, Beetz and de Grandpré JJ: The Canada Labour Code defines a “federal work” in s. 2(i) as including all work outside the exclusive jurisdiction of provincial legislatures, and s. 27 indicates that a “federal work” in the territories does include work which, in the provinces, would be within the scope of provincial jurisdiction under Head 16 of s. 92 of the British North America Act. It would run contrary to the intention of Part V of the Code as set out in the Preamble to the 1972 legislation to hold that employees of municipalities in the territories cannot have the benefit of any compulsory bargaining legislation. Parliament has the power to legislate for employees in the Northwest Territories and sub-para. (i) of the Code’s definition of “federal work” shows its intention to exercise this power. The powers granted to the Commissioner of the Northwest Territories by s. 13 of the Northwest Territories Act are expressed as being subject to any other Act of the Parliament of Canada and there is no reason to suppose that in defining “federal work” in the Code, Parliament intended to restrict its scope in relation to the authority of the Commissioner in the same way as it is restricted in relation to the authority

of the provincial legislatures.

The remaining question is whether a “federal work” under the Code includes the operation of a municipal corporation in the territories. Jurisdiction depends on the legislative authority over the operation, not on who is the employer. It would therefore be wrong to restrict the meaning of “federal work” in the Canada Labour Code so as to exclude the activities of municipalities and it would be contrary to the concept of classifying employees for jurisdictional purposes by reference to the character of their work if a distinction were to be made between public and private corporations.

International Brotherhood of Electrical Workers v. Town of Summerside, [1960] S.C.R. 591; *Canadian Pacific Railway v. Corporation of the Parish of Notre-Dame de Bonsecours*, [1899], A.C. 367; *Canadian Pacific Railway v. Attorney General for British Columbia and Attorney General for Canada*, [1950] A.C. 122; *Canada Labour Relations Board v. C.N.R.*, [1975] 1 S.C.R. 786; *Attorney General for Ontario v. Attorney General for the Dominion*, [1896] A.C. 348; and *Letter Carriers Union v. C.U.P.W.*, [1975] 1 S.C.R. 178 applied.

APPEAL from a judgment of the Federal Court of Appeal^[1] setting aside a certificate issued by the Canada Labour Relations Board to the Public Service Alliance of Canada as bargaining agent for a unit of employees of the City of Yellowknife. Appeal allowed.

Derek Aylen, Q.C., and Glenn St-John, for the appellant, Canada Labour Relations Board.

L.M. Joyal, Q.C., and Georges Robichon, for the appellant, Public Service Alliance of Canada.

G.A. Lucas, for the respondent.

The judgment of Laskin C.J. and Judson was delivered by

THE CHIEF JUSTICE—I have had the advantage of seeing the reasons of my brother Pigeon and I too would allow this appeal, but I am content to do so on the short ground that, viewing Part V of the present Canada Labour Code, 1972 (Can.), c. 18, s. 1 historically, and looking at the interlocking effect of ss. 108 and 109 of that Code, covering both the private sector and the public sector, the later either under s. 109(1) or under the Public Service Staff Relations Act, R.S.C. 1970, c. P-35, it would be incongruous to declare a gap in the application of collective bargaining advantages to employees who are employed by a municipality in the Northwest Territories. In view of the all-encompassing legislative authority of the Parliament of Canada in the Northwest Territories, I do not think there is any justification for assessing the scope of Part V of the Labour Code, in its application to the Northwest Territories, in exactly the same way in which the respective limits of federal and provincial legislative jurisdiction in relation to labour relations would be measured. Moreover, having regard to the definition of “federal work, undertaking or business” in s. 2 of the Labour Code, R.S.C. 1970, c. L-1, and especially s. 2(i) (“a work, undertaking or business outside the exclusive legislative authority of the Province”) any ambiguity or doubt whether the federal statute covers the employees of a municipality, organized in federal and federally administered territory, and such municipalities in their relations with

their employees, should be resolved in favour of inclusion rather than of exclusion. I agree with my brother Pigeon as to the award of costs.

The judgment of Pigeon, Ritchie, Spence, Dickson, Beetz and de Grandpré JJ. was delivered by

PIGEON J.—This is an appeal from the judgment of the Federal Court of Appeal setting aside the certificate issued by the Canada Labour Relations Board (“the Board”) to the other appellant, Public Service Alliance of Canada (“the Alliance”) as bargaining agent for a unit of employees of the respondent, the City of Yellow-knife (“the City”). The unit includes all the City’s employees except those in managerial positions. The reason for which the certificate was set aside is that the Board was said to have exceeded its jurisdiction, the operations of the City being held not to be a “federal work, undertaking or business” within the meaning of the Canada Labour Code (R.S.C. c. L-1 as amended). The certificate was issued under the provisions of Division I of Part V, the main application provision of which is s. 108 reading as follows:

108. This Part applies in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers’ organizations composed of such employees or employers.

Section 109 deals with employees of the Government of Canada or a corporation established to perform any function or duty on its behalf. It is important to note that the criterion for the application of Part V to all other employees is whether they are employed upon or in connection with the operation of any “federal work, undertaking or business”. This expression is defined in s. 2 of the Code as follows:

“federal work, undertaking or business” means any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including without restricting the generality of the foregoing:

- (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;
- (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other or others of the provinces, or extending beyond the limits of a province;
- (c) a line of steam or other ships connecting a province with any other or others of the provinces, or extending beyond the limits of a province;
- (d) a ferry between any province and any other province or between any province and any other country other than Canada;
- (e) aerodromes, aircraft or a line of air transportation;

- (f) a radio broadcasting station;
- (g) a bank;
- (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of two or more of the provinces;
- (i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures;

Parliament clearly indicated in s. 27 of the Code dealing with the application of Part III (Standard Hours, Wages, Vacations and Holidays) that in the Territories, “federal work, undertaking or business” included operations which in the provinces come within the scope of Head 16 of s. 92 of the B.N.A. Act: “Generally all Matters of a merely local or private Nature in the Province”. Subsection (1) of s. 27 is as follows:

27. (1) This Part applies to and in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business, other than a work, undertaking or business of a local or private nature in the Yukon Territory or Northwest Territories, and to and in respect of the employers of such employees and to employment upon or in connection with the operation of any such federal work, undertaking or business.

It is obvious that this provision was enacted so as to leave scope for the operation of territorial ordinances such as the Labour Standards Ordinance of November 25, 1967 (now R.O.N.W.T. 1974, c. L-8). There is no similar territorial legislation concerning the matters dealt with in Part V of the Labour Code (Collective Bargaining, Certification, etc.) so that the result of the construction put upon the Code by the Court below is that employees of municipal corporations in the Territories would not have the benefit of any compulsory collective bargaining legislation. This was, in a sense, the contention put forward by the Town of Summerside in respect of the Trade Union Act of Prince-Edward Island based upon the special situation of municipal corporations towards their employees. This contention was unanimously rejected in this Court: *International Brotherhood of Electrical Workers v. Town of Summerside*[2]. In my view, it also runs counter to the basic intent of Part V expressed as follows in the preamble of the statute of 1972 (c. 18) enacting it in its present form:

Whereas there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlements of disputes;

And Whereas Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;

And Whereas the Government of Canada has ratified Convention No. 87 of the International Labour Organization concerning Freedom of Association and Protection of the Right to Organize and has assumed international reporting responsibilities in this regard;

And Whereas the Parliament of Canada desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all;

The authority of the Parliament of Canada to legislate in respect of any employees in the Northwest Territories is beyond question. Par. (i) of the definition of “federal work, undertaking or business” indicates an intention to exercise this jurisdiction. The general purpose of the definition was obviously to embrace only matters within federal legislative authority. A large part of the language of para, (a), (b), (c), (d) and (h) is taken from heads 10 and 13 of s. 91 of the B.N.A. Act:

10. Navigation and Shipping.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

and the exceptions in head 10 of s. 92 of the B.N.A. Act.

10. Local Works and Undertakings other than such as are of the following Classes:—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

Reference is made in the Court below to the legislative powers granted to the Commissioner in council by s. 13 of the Northwest Territories Act (R.S.C. c. N-22). It should be noted, however, that unlike provincial legislative powers, these are “subject to this Act and any other Act of the Parliament of Canada”. The opening paragraph and those quoted in the Court below are as follows:

13. The Commissioner in Council may, subject to this Act and any other Act of the Parliament of Canada, make ordinances for the government of the Territories in relation to the following classes of subjects, namely:

...

(c) municipal institutions in the Territories, including local administrative districts, school districts, local improvement districts and irrigation districts;

...

- (f) the incorporation of companies with territorial objects, including tramways and street railway companies but excluding railway, steamship, air transport, canal, telegraph, telephone or irrigation companies;

...

- (h) property and civil rights in the Territories;

...

- (s) the closing up, varying, opening, establishing, building, management or control of any roads, streets, lanes or trails on public lands;

...

- (u) the establishment, maintenance and management of hospitals in and for the Territories;

...

- (x) generally, all matters of a merely local or private nature in the Territories;

Note must be taken of the limited scope of paras. (f) and (s) as contrasted with head 10 of s. 92. I can see no valid reason for presuming that in enacting the definition of “federal work, undertaking or business” for the purposes of the Canada Labour Code, Parliament intended that its scope would be restricted by consideration of the extent of the Commissioner’s legislative authority in the same way as it is necessarily restricted by consideration of the extent of the provinces’ legislative authority. Paragraph (i) is a clear indication to the contrary and this is further borne out by s. 27 as well as by similar provisions in s. 80. The subordinate position of the Commissioner was obviously kept in mind.

This leaves for consideration as the only question in this case whether, in the context of the Labour Code, the definition of the expression “federal work, undertaking or business” embraces the operations of a municipal corporation.

In considering this question, one has to bear in mind that it is well settled that jurisdiction over labour matters depends on legislative authority over the operation, not over the person of the employer. In *Canadian Pacific Railway v. Corporation of the Parish of Notre-Dame de Bonsecours*[3] (at p. 372), Lord Watson said: ...the Parliament of Canada has, in the opinion of their Lordships, exclusive right to prescribe regulations for the construction, repair, and alteration of the railway, and for its management, and to dictate the constitution and powers of the company.

In accordance with this view of the criterion for the division of legislative jurisdiction, it was decided that jurisdiction over hotel employees was provincial even in the case of hotels owned by a federal railway company: *Canadian Pacific Railway v. Attorney General for British Columbia and Attorney General for Canada*[4]; *Canada Labour Relations Board v. C.N.R.*[5].

Similarly, the provinces' legislative authority under head 8 of s. 92, "Municipal Institutions in the Province" was given a limited scope. In *Attorney General for Ontario v. Attorney General for the Dominion* (Liquor Licence Act case)[6], Lord Watson said (at pp. 363-364):

The authority of the Legislature of Ontario to enact s. 18 of 53 Vict. c. 56, was asserted by the appellant on various grounds. The first of these, which was very strongly insisted on, was to the effect that the power given to each province by No. 8 of s. 92 to create municipal institutions in the province necessarily implies the right to endow these institutions with all the administrative functions which had been ordinarily possessed and exercised by them before the time of the Union. Their Lordships can find nothing to support that contention in the language of s. 92, No. 8, which, according to its natural meaning, simply gives provincial legislatures the right to create a legal body for the management of municipal affairs. Until confederation, the Legislature of each province as then constituted could, if it chose, and did in some cases, entrust to a municipality the execution of powers which now belong exclusively to the Parliament of Canada. Since its date a provincial Legislature cannot delegate any power which it does not possess; and the extent and nature of the functions which it can commit to a municipal body of its own creation must depend upon the legislative authority which it derives from the provisions of s. 92 other than No. 8. Recently, in *Letter Carriers Union v. C.U.P.W.*[7], this Court was unanimous in holding that persons employed in carrying mail as employees of a company doing such work under a contract for the post office, were covered by s. 108 of the Canada Labour Code although their employer operated a local business. The character of the operation was to be defined by reference to the fact that it was part of the postal service, a federal concern.

In my view, it would not be proper to seek to put a restricted meaning on any of the words "work, undertaking or business" as used in the Labour Code so as to exclude from their scope all activities of municipal corporations. Some of these operations, like waterworks and sewage systems, undoubtedly come within any concept of "work". Others, like protection or sanitation services, cannot be excluded from the scope of "undertaking" without doing violence to the language, and "business" has been said to mean "almost anything which is an occupation, as distinguished from a pleasure—anything which is an occupation or duty which requires attention ..." (per Lindley, L.J. in *Rolls v. Miller*[8], at p. 88). There is no doubt that the word "business" is often applied to operations carried on without an expectation of profit. In my view, it would be contrary to the whole concept of classifying employees for jurisdictional purposes by reference to the character of the operation, to attempt to make a distinction depending upon whether the employer is a private company or a public authority. Different considerations may obtain where the employer is a government or government corporation and this is apparent from s. 109 of the Labour Code. However, this is a question with which we are not concerned in this case.

For the above reasons, I would hold that the Canada Labour Board did not exceed its jurisdiction and accordingly allow the appeal, set aside the judgment of the Court of Appeal, dismiss the application of the City of Yellowknife and restore the Board's certificate with costs to Public Service Alliance of Canada in this Court and in the Federal Court of Appeal.

Appeal allowed with costs.

Solicitor for the appellant, Canada Labour Relations Board: D.H. Aylen, Ottawa.

Solicitors for the appellant, Public Service Alliance of Canada: Honeywell & Wotherspoon, Ottawa.

Solicitors for the respondent: Stratton & Lucas, Edmonton.

[1] [1976] 1 F.C. 387, 63 D.L.R. (3d) 753, 76 C.L.L.C. 14,001.

[2] [1960] S.C.R. 591.

[3] [1899] A.C. 367.

[4] [1950] A.C. 122.

[5] [1975] 1 S.C.R. 786.

[6] [1896] A.C. 348.

[7] [1975] 1 S.C.R. 178.

[8] (1884), 27 Ch.D. 71.

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