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Interlocutory injunction — Strike — Picketing — Constitutionality

A union declared a strike and established a picket line during negotiations for a collective agreement. At this, the plaintiff made application for an interlocutory injunction.

Decision: The court granted the request and declared: 1. The court cannot decide at this time on the basis of the litigation. It can only determine if the plaintiff has proved *prima facie* that there is cause for an injunction. This has been proved. Therefore the court orders the application of such an injunction restraining picketers from watching and besetting and from intimidating other employees in the manner described by section 501 of the Criminal Code, as well as from constituting a nuisance according to common law. Also this injunction is to prevent them from participating in any strike contrary to the Labour Relations Act. 2. The fact that the employer supported a company union before certification does not constitute an act of bad faith. And this cannot lead the court to use its discretion to refuse an injunction. 3. In interlocutory procedures, the court cannot make a final pronouncement upon the constitutionality of an act, but

can only decide if the constitutionality of the act is probable or not. The Labour Relations Act is *intra vires*. The penalty sections (sections 43 and 44) of this Act are merely ancillary to the chief purpose of the Act which falls under the heading of section 92 of the B.N.A. Act in regard to property and civil rights. Section 43 of the Labour Relations Act does not render strikes illegal, but it establishes penalties to be applied when a strike is declared before certain conditions have been complied with. This does not at all conflict with section 590 of the Criminal Code which removes the illegal character from certain strikes. This latter section does not prevent a province from legislating on subjects related to property and civil rights. 4. While it is doubtful whether action may be taken against a trade union in its own name under section 29 of the Special Procedure Act, c. 342, R.S.Q. 1941, judgment may be obtained *de bene esse* and against all the members of the union.

(Aird & Son Ltd. v. Local 500, International Union of Shoe and Leather Workers of United States and Canada et al. and Association of Shoe Manufacturers of Quebec, 1948; 3 D.L.R. 114; Superior Court, Quebec, December 16, 1947; Justice Campbell; C.L.L.R. 31,081 No. 35,083.)

STATISTICS AND INFORMATION

ANNUAL VACATION WITH PAY IN COLLECTIVE AGREEMENTS IN THE PROVINCE OF QUEBEC

This is the second excerpt from a work done in collaboration under the auspices of the research bureau of the *Département des relations industrielles*.

It deals with vacation with pay provisions in collective agreements deposited with the Quebec Labour Relations Board as of December 31, 1948.

The first table covers all establishments except manufacturing. In this division, 1,688 employers grant an initial vacation of one week to 28,856 workers; the minimum vacation is two weeks for 15,529 employees of 250 employers, and three weeks for 13 employees of two employers.

A maximum of one week's vacation is granted by 1,207 employers to 6,341 workers. The maximum vacation is two weeks for 698 employers employing 34,487 workers, three weeks for 3,361 employees of 14 employers, and four weeks for the 209 workers employed by one firm.

Among the different provisions of this group of agreements the following are worthy of note. Ordinance No 3 of the Minimum Wage Commission regulates in 39 agreements. The rate of pay is according to percentage in 17 agreements; average rate in 6 agreements; regular wages in 31 agreements. The fixing of vacations is left to the employer in 47 agreements; to employees in 6 agreements; in 29 the subject must be a matter of a joint understanding, while in 43 others seniority must be taken into account.

The second table is that of the body of collective agreements relating to manufacturing industries. It is the most important section because, of 1,185 collective agreements deposited with the Labour Relations Board as of December 31, 1948, 702 refer to it, and so 59.2%

of these agreements regulate 32.8% of employers and 68.4% of workmen.

In this group, 855 employers grant to their 127,020 employees an initial vacation of one week, and 84 employers grant to their 10,180 employees a minimum vacation of two weeks after one year of service. In one case the minimum vacation is three weeks for 16 employees of one firm from the first year of service.

In relation to the total number of manufacturing industry workers subject to collective labour agreements, a negligible fraction, scarcely one tenth of one percent, have no right to any annual vacation with pay. However it is worthy of note that 7.4 percent of the workers have an initial vacation of two weeks from the very first year of service.

For 34,371 workers (25% of the group) working for 438 employers, the maximum vacation is one week; for 76,885 workers (56%) in the employ of 408 employers: two weeks; for 23,232 (16.9%) working for 81 employers: three weeks; for 2,728 (2.1%) employed by 13 employers: four weeks.

Close to three quarters of the number of industrial workers benefit from a vacation of two or three weeks. As to length of service required to have right to vacation: 86.6% of the total number of industrial workers have a right to two weeks annual vacation before having fulfilled six years of service. A maximum vacation of three weeks is the right of 8.5% of workers before 20 years of service; of 37.9% after 20 years; of 17.2% after 21 years; of 36.4% after 25 years. Thus this vacation is granted, in the majority of cases, after twenty or twenty-five years of service.

The collective agreements regulating manufacturing industries are marked by a great variety of provisions relative to annual vacation with pay. Thus 17 agreements refer to ordinance No. 3 of the Minimum Wage Commission for annual vacation with pay. 253 agreements include pay regulations: 134 according to percentage, 94 according to regular wage, and 25 according to average wage. In 47 agreements it is stipulated that the establishment will be closed during the annual vacation period. As to the date of the vacation, 179 agreements leave the employer free to decide, 7 give the choice to the employees, 43 require a joint understanding, and 9 consider seniority.

The last table of the present series is a synthesis of the two first ones.

It can be seen that a grand total of 181,614 workers in the service of 2,860 employers have the right, according to these agreements, to a minimum annual vacation of one year. Of this group, 314 employers grant their 25,709 employees an initial vacation of two weeks and three employers employing 29 workers grant a three-week vacation from the very first year of service.

In relation to the total number of employees subject to collective labour agreements we note that 7.6% do

not benefit from any paid annual vacation. These are mostly construction workers. Of the workers who get a vacation with pay each year, the beginning vacation is one week for 85.9% and two weeks for 14.1%.

The maximum annual paid vacation is one week for 40,712 workers in the service of 1,645 employers. It is two weeks for 111,372 employees of 1,106 employers, after one or more years of service; three weeks for 26,593 employees working for 95 employers, after several years of service; and four weeks for the 2,937 employees of 14 employers after 20, 25 or 30 years of service.

We note that of the total number of workers who get an annual vacation with pay, 22.4% have a right to a week's maximum. Thus three fourths of the total get more than one week per year. 61.3% can look forward to two weeks vacation each year, after some years of service; 14.6% can expect a vacation of three weeks; 1.7% a vacation of four weeks. We note also that the length of service required in order to have right to a vacation of two weeks is one year for 23.1% of workers, two years for 3.7%, three years for 6.7% and four years for 1.7%. More than half (54.6%) have a two-week vacation after five years of service, and 89.8% get the same after six years of service.

TABLE I: VACATION WITH PAY IN 328 COLLECTIVE WORK AGREEMENTS DEPOSITED WITH THE LABOUR RELATIONS BOARD OF THE PROVINCE OF QUEBEC FOR ALL GROUPS EXCEPT MANUFACTURING INDUSTRIES, CLASSIFIED ACCORDING TO NUMBER OF EMPLOYERS, NUMBER OF EMPLOYEES, IN EFFECT AS OF DECEMBER 31, 1948.

length of time required	1 week		2 weeks		3 weeks		4 weeks	
	employers	employees	employers	employees	employers	employees	employers	employees
<i>minimum vacation</i> 1 year or less	1,688	28,856	230	15,529	2	13	—	—
<i>maximum vacation</i>								
1 year	1,207	6,341	230	15,529	2	13		
2 years			31	3,234				
3 years			9	1,376				
4 years			1	7				
5 years			285	13,213	1	80		
7 years			137	483				
10 years			5	645	1	1,090		
14 years					2	30		
15 years					3	383		
20 years					3	235	1	209
25 years					2	1,530		
TOTALS	1,207	6,341	698	34,487	14	3,361	1	209

TABLE II: VACATION WITH PAY IN 702 COLLECTIVE WORK AGREEMENTS DEPOSITED WITH THE LABOUR RELATIONS BOARD OF THE PROVINCE OF QUEBEC FOR MANUFACTURING INDUSTRIES, CLASSIFIED ACCORDING TO NUMBER OF EMPLOYERS, NUMBER OF EMPLOYEES, IN EFFECT AS OF DECEMBER 31, 1948.

length of time required	1 week		2 weeks		3 weeks		4 weeks	
	employers	employees	employers	employees	employers	employees	employers	employees
<i>minimum vacation</i> 1 year or less	855	127,020	84	10,180	1	16	—	—
<i>maximum vacation</i>								
1 year	438	34,371	84	10,180	1	16		
2 years			11	897				
3 years			64	6,094				
4 years			3	1,834				
5 years			219	47,608	1	39		
6 years			6	424				
7 years			4	6,733				
10 years			16	3,065	3	113		
15 years					13	1,778		
20 years			1	50	34	8,821		
21 years					4	4,007		
25 years					25	8,458	5	2,489
30 years							8	239
TOTALS	438	34,371	408	76,885	81	23,232	13	2,728

TABLE III: VACATION WITH PAY IN 1,185 COLLECTIVE WORK AGREEMENTS DEPOSITED WITH THE LABOUR RELATIONS BOARD OF THE PROVINCE OF QUEBEC, FOR ALL ESTABLISHMENTS, CLASSIFIED ACCORDING TO NUMBER OF EMPLOYERS, NUMBER OF EMPLOYEES, IN EFFECT AS OF DECEMBER 31, 1948.

length of time required	1 week		2 weeks		3 weeks		4 weeks	
	employers	employees	employers	employees	employers	employees	employers	employees
<i>minimum vacation</i> 1 year or less	2,543	155,876	314	25,709	3	29	—	—
<i>maximum vacation</i>								
1 year	1,645	40,712	314	25,709	3	29		
2 years			42	4,131				
3 years			73	7,470				
4 years			4	1,841				
5 years			504	60,821	2	119		
6 years			6	424				
7 years			141	7,216				
10 years			21	3,710	4	1,203		
14 years					2	30		
15 years					16	2,161		
20 years			1	50	37	9,056	1	209
21 years					4	4,007		
25 years					27	9,988	5	2,489
30 years							8	239
TOTALS	1,645	40,712	1,106	111,372	95	26,593	14	2,937