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Résumé de l'article

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ARBITRATION JURISPRUDENCE

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1—UNION SECURITY

In almost all the arbitration awards studied, the question of union security to be granted to the workers' union involved, in one form or another, was discussed.

No award gave a closed shop. In most cases the arbitration councils granted the voluntary but irrevocable check-off of union dues for the duration of the contract. In several awards, maintenance of membership was granted and in a few, the imperfect union shop.

It may be noted that the latter formula is given generally only in unanimous awards by the councils. In one case, however, that of *Les Hopitaux Notre Dame et Pasteur*, of Montreal¹, the council, in a majority award, the employer's representative dissenting, granted the imperfect union shop in the following terms:

After having recalled the opposition of the employer's representative, to the effect that the clauses of imperfect union shop or maintenance of membership should not be granted because they are illegal in our province and because these measures are of a nature to deprive the workers of their liberty in forcing them to belong to a union or to remain a member, the arbitration award reads as follows:

"The argument appears to be a very serious one from the viewpoint of a civilist.

We are, however, in matter of social law, which is still in its formative phase.

The social law appears, therefore, to the majority of the members of the council to be capable of being enriched and completed by the contribution of recognized practices and customs.

The maintenance of membership and the imperfect union shop appear to the majority of the members of the council, as clauses recognized in social law and the recognition granted them in labour agreements would appear to sanction the legality.

Moreover, even from the civilist's viewpoint, the majority of the members of the council believes that section 17 of the Professional Syndicates Act is not of public interest and that it is possible to derogate from it in particular agreements.

As the council's mission in the present dispute is to direct the drawing up of a collective agreement, its role does not appear to be of purely juridical order.

It seems that this council may direct all that may be agreed to in a collective agreement.

The clause of imperfect union shop appears to the council as a measure of equity in imposing union dues on the workers who profit from the work and the expenses incurred by the union to improve the lot of all the workers."

In another award, that of the *Associated Textiles of Canada Limited of Louiseville*,² the arbitration council, has

(1) Department of Labour, Document No. 536, page 3; date of award: Nov. 1951. Dispute between the *Hopitaux Notre Dame et Pasteur* and "l'Association des employés d'hôpitaux de Montreal, Inc." Members of council: president: Raymond Beaudet, C.R.; employer's representative: J. H. Roy; union representative: Pierre Vadeboncoeur.

(2) Department of Labour, Document No. 535, page 10; date of award: October 10, 1951. Dispute between *Associated Textiles of Canada, Ltd., Louiseville*, Quebec and "le Syndicat national catholique de textile de Louiseville, Inc." Members of council: president: Hermann Barrette; employer's representative: Gerard La-croix; union representative: Fernand Villeneuve.

granted unanimously, an imperfect union shop clause with a maintenance of membership clause and one of voluntary and irrevocable check-off of union dues for the duration of the agreement.

In another case, that of the Rockland Furniture Company Ltd.,³ here is how the president of the council expresses himself on the question of union security.

"On this question, in effect, the president of the council is of the same opinion as Mr. Justice Thomas Tremblay, as expressed in his decision or award of Dec. 10th, 1949 in the case of Asbestos Corporation Limited and the Syndicat national de l'amiante de l'Asbestos Corporation Limited Inc.

Because of the economy of our civil law and the prescriptions of our code of civil procedure, on the subject of property rights and methods of seizure etc., we cannot accept the Rand formula.

In our viewpoint a deduction from a salary can only be accepted if it is voluntary, or if it is ordered by an enforceable judgment of a competent court."

In the award regarding the *Compagnie de Bois de Luceville, Rimouski*,⁴ the members of the council recommended unanimously, a clause of imperfect union shop, in the terms and for the reasons following:

"All the labour legislation of the Province of Quebec tends to assure the survivance and the proper functioning of the associations recognized by law as much those of the workers as those of the employers. The Council considers that it would be contrary to the spirit of our labour laws

to not grant a clause of union security appropriate to the situation of the union and the enterprise under consideration.

This is why, after having examined the proof on this point, after having considered the arguments presented by both parties to the dispute, after careful deliberation, the members of the council, unanimously, have decided to grant the union in this case, a clause of imperfect union shop and have based themselves particularly on the following reasons:

- 1. The proof shows us that the enterprise is of a seasonal nature and it is recognized that in such an enterprise, a union can only survive with difficulty and exercise the privileges recognized for it by the law, without a measure of adequate union protection;*
- 2. The high percentage of labour turnover makes it difficult for the union to keep its members under an imperfect union shop clause;*
- 3. The employer has expressed before the Council many times, his desire to see the union survive, as long as it acts with respect of the laws and authority."*

In a final case, that of *General Steelwares, Limited*,⁵ the arbitrators refused to grant measures of union security for the following reasons. This concerns a union which negotiates for the office employees of the said Company:

«The Board is unanimously of opinion, apart from other considerations, that in this case as the field of salaried or office workers is a new one for the Union and as the proposed agreement is the first between the parties in this regard, the Union has not yet established its position with either the Company or the employees where it should expect the Company to perform functions which are, in law and in fact, those of the Union and are for the benefit of the Union itself as opposed to the Company and

(3) Department of Labour, Document No. 540, page 17; date of award: December 4, 1951. Dispute between "Rockland Furniture Company Limited" and "Upholsterers' International Union of North America, Local 302". Members of council: president: Urie Laurencelle; employer's representative: Ph. Cutler; union representative: Laz. L. Tinkoff.

(4) Department of Labour, Document No. 552, pages 6 and 7; date of award: February 6, 1952. Dispute between the "Compagnie de Bois de Luceville" and "Le Syndicat catholique de l'industrie du bois de Luceville". Members of council: president: Jean H. Gagné; employers representative: Guy d'Anjou; union representative: F. X. Legare.

(5) Department of Labour, Document No. 559, page 2; date of award: Feb. 18, 1952. Dispute between "General Steelwares Limited" and "United Steelworkers of America, local 4489". Members of council: president: Raymond Caron; employer's representative: Ernest Girvin; union representative: Romeo Mathieu.

its individual members. On the other hand, the Board is of opinion that if its accounting equipment and organization will permit the making of deductions for Union dues without undue added expense, the relations between the parties both in the factories and in the Montreal office would warrant the Company agreeing to a voluntary, revocable check-off of Union dues. The authorization for the deduction should be signed in writing by the individual members and should be revocable at any time after fifteen days notice in writing to the Company. »

2—COST OF LIVING INDEX AND WAGES

In an award rendered in the case of the *Rockland Furniture Company Limited*,⁶ already quoted, the cost of living index is valued at 45 cents per point, per week, taking as base the known index at the date of award.

In another award, that concerning the *Verney Corporation of Canada Limited*,⁷ the members of the council recommend another way of interpreting the increase in the cost of living index, by giving for each point of increase, from a date agreed upon as a basis for calculation, the value of $\frac{2}{3}$ of a cent per hour.

In the case of *Maranda & Labrecque Limitee*,⁸ the members of the council, in their award, made the following remarks in regard to the role that the increase in the cost of living index may take in the fixing of wages:

"The arbitration council is of the opinion that the cost of living index

does not constitute, by itself, an indisputable argument in the case of a demand for a wage increase. It must be considered for what it really is, that is to say, an index, a relative measure of the variation of the average purchase price of the ordinary expenses incurred by an average family for its maintenance. It, therefore, has not and cannot have more than a relative value, a value even more relative because it applies to the whole country, except in the case where a local index exists, which it must be admitted still keeps its character of relative value. Moreover, when the index is used as an argument in a wage dispute, it must, to be fair, be compared with the index of wage rates.

This is necessary, because it is desired to show that the increase in the cost of living, registered by the index, causes a devaluation of the buying power of wages. However, the difficulty of the comparison lies in the fact that the two indices do not have the same composition; in Canada, not the same base. And absolutely nothing indicates that during their respective base periods, there was parity between wages and consumer prices.

On the other hand, if we accept the validity of the argument offered by the cost of living index, it can only be done after having made the corrections which allow this parity to be established. However, this is precisely what has been done by the Division of Economics and Research of the Federal Department of Labour, when it set up for Canada an index of average weekly real wages (buying power) by establishing a comparable base for the index of wages and the cost of living index (index number 1946 = 100). This index of the buying power of the average weekly wages (see the *Labour Gazette*, September 1951; table C-7, page 1303) was at 108.7 at June 1, 1950, and at 108.8 June 1, 1951, which means that the buying power of the average weekly wages had slightly increased during this period."

In another award, that of the *Cie de Bois de Luceville, Rimouski*,⁹ already

(6) Department of Labour, Document No. 540, page 17; date of award: Dec. 4, 1951. Dispute between "Rockland Furniture Company Limited" and "Upholsterers' International Union of North America, Local 302". Members of council: president: Urie Laurencelle; employer's representative: Ph. Cuttler; union representative: Laz. L. Tinkoff.

(7) Department of Labour, Document No. 544, page 4; date of award: Dec. 28, 1951. Dispute between "Verney Corporation of Canada Limited" and "Syndicat catholique national des employes de Verney Mills Inc.". Members of council: president: Victor Barre; employer's representative: Raymond Caron; union representative: Gaston Ledoux.

(8) Department of Labour, Document No. 550, pages 4, 5, 10; date of award: Jan. 30, 1952. Dispute between "Syndicat national des apprêteurs et teinturiers en fourrures de Quebec Inc." and "Maranda & Labrecque Ltée". Members of council: president: Achille Pettigrew; employers representative: Jean-Marie Martin; union representative: Frederic St. Pierre.

(9) Ibidem, Document No. 552, pages 6 and 7.

quoted, the arbitrators state that the employees of enterprises have a definite right to an adjustment of their wages following an increase in the cost of living index in the country, even if the enterprise is not otherwise able to increase wages, except if the enterprise can prove a total and absolute incapacity to pay.

3—THE FORTY-HOUR WEEK

In the case of the *Gotham Hosiery Company of Canada Limited*,¹⁰ the union representative, in his minority report, makes some remarks on the work week that might become standard in the full-fashioned hosiery industry. Here is how he expresses this:

"It is a proven fact that has not been contradicted, that the general tendency is toward a regular work week of forty hours (Labour Gazette, November issue, 1950). It is also the case for the shifts of "leggers" in the full-fashioned hosiery industry. At least ten competitive companies are on this basis for the "leggers". There is no serious obstacle preventing the Company in dispute doing the same. It is an admitted fact that the reduction of hours does not bring with it a corresponding reduction in productivity and that the loss is partially compensated by the fact that the workers, less affected by fatigue, can give a better output. The physiological and social aspect, moreover, justifies fully the forty-hour week. And it is that much more reasonable in this case that it concerns a highly-specialized occupation which requires a lot of attention and accumulates more fatigue."

4—SENIORITY

In the case of *Montreal Locomotive Works Limited*,¹¹ the union had re-

quested the council to include in the collective agreement to be concluded between the two parties, a clause exempting the persons rendered incapable by age or infirmity, from the prescriptions of the clause of seniority and to give them the right to do certain tasks under special conditions. The council refused such a clause, basing itself on the following considerations:

"The Board is of opinion that the inclusion of such a clause in the contract is undesirable as it could lead to unnecessary friction and misunderstanding between the Company and the Union. Furthermore the matter is more properly one of social welfare than labour relations. The clause as suggested could create difficulties in the proper exercise by the Company of its admitted management rights and on the other hand might cause embarrassment to the Union due to the opening it would create for possible exaggerated demands by employees that the Union endeavour to enforce the clause of unjustifiable claims. The Board recognizes that as the proposed labour agreement will be the first agreement between the parties, the parties have not had the opportunity of working together. It may well be demonstrated by experience that the concern that the Union presently has for employees disabled in Company's service or incapacitated by reason of age or infirmity may be unjustified."

5—FACTORS DETERMINING AN INCREASE IN WAGES

In the case of *Gotham Hosiery*,¹² it is of interest, in order to understand the union's point of view, to read the minority report of the union representative on the subject mentioned above.

As factors to be studied in order to justify an increase in wages, Mr. L'Esperance examines the following points: the readjustment of wages following the increase of the cost of living index; the financial situation of the enterprise, the difficulties of the market and their influence on the fixing of prices by the employer, that is to say, the argument of competition, the wages paid in competitive enterprises of the same kind.

(10) Department of Labour, Document No. 539, page 6; date of award: Nov. 6, 1951. Dispute between "Gotham Hosiery Company of Canada Limited" and "Syndicat national des employés du bas façonné de la Gotham". Members of council: president: Rodolphe DeBlois; employer's representative: Gerard Lacroix; union representative: Theodore L'Esperance.

(11) Department of Labour, Document No. 538, pages 2 and 4, date of award: Nov. 27, 1951. Dispute between "Montreal Locomotive Works Limited" and "United Steelworkers of America, local 4580". Members of council: president: Bernard Rose; employer's representative: Raymond Caron; union representative: Romeo Mathieu.

(12) Ibidem, Document No. 539, page 6.

Particularly, on the question of the cost of living, Mr. L'Esperance pretends that to refuse the necessary adjustment of wages in accordance with the increase in the cost of living index is equivalent to reducing the real wages of the workers.

In an arbitration award, already quoted, that of *Maranda & Labrecque*,¹³ here are the factors that the members of the council have analysed in order to decide on the wages: the productivity, particularly that of the enterprise itself; the comparison between enterprises; the cost of living; the capacity of the enterprise to pay.

6—AREA OF PUBLIC SERVICE.

Division of demands before an arbitration council in order to facilitate the study of a collective agreement.

The arbitration of the dispute between the *Aluminum Company of Canada Limited*, for its generating stations at *Shishaw* and *Chute a Caron*¹⁴ and its employees' union, brought out considerations of interest from many viewpoints, considerations that may be read as much in the majority report as in the minority report of the union representative.

The president of the council, replying to an objection of the union's attorney, decided that, according to the definition of a public service, as may be seen in paragraph (d) of section 2, of the *Public Services Employees Disputes Act*, he has no choice and that it is indeed this latter law, with its restrictions on the right to strike and the obligatory nature of the arbitration award, which applies in the present case. Here is how the president explains this question:

"During the first public hearings of your arbitration council, the Union representatives have objected to the

present dispute being subjected to the Public Services Employees Disputes Act. According to their point of view the generating-stations of Shishaw and Chute a Caron only produce for the Company's plants at Arvida.

It follows from the proof produced at the inquiry, that the generating-stations are enterprises of production, of transmission and even, to some extent, of the sale of electricity.

In this case, your arbitration council has no alternative, it must conform to the regulations of the Public Services Employees Disputes Act. This act applies to all public services and consequently to the generating-stations of Shishaw and Chute a Caron.

The union representative does not understand it this way and here is how he expresses his opinion in the minority report:

"I do not wish to analyze in this report if the council had the duty to determine if it was a public service or industrial service concerned. I believe the council has as a function to settle the dispute between the two parties about working conditions, but it did not have the jurisdiction to determine into which of the two categories the present arbitration should be placed. Furthermore, if the letter by which you named me as a member of the arbitration council is referred to, there is no mention as to whether the dispute should be arbitrated under one or the other Act. I am of the opinion that the council should have only given its opinion on the amendments that the union requested and should not have exceeded its jurisdiction. This point of law should have been decided by you or by the regular courts."

The same union representative, at the beginning of his minority report, complains that the president of the council and the employer's representative, presented to the Minister of Labour, without his knowledge, a majority report in the matter mentioned above. He contends that the president did not advise him

(13) Ibidem, Document No. 550, pages 4 and 5.

(14) Department of Labour, Document No. 545, pages 3-35; date of award: Dec. 20, 1951. Dispute between the "Aluminum Company of Canada Limited" and the "Syndicat national des employés des pouvoirs électriques de Shishaw et Chute a Caron". Members of council: president: Achille Pettigrew; employer's representative: Robert Lafleur; union representative: Louis-Philippe Bolly.

that he would hold discussions with only the employer's representative.

In the majority report, it is noted that the parties, in order to facilitate the work of the council have divided the union demands in three distinct categories, which, in our opinion, may help the work of the council when the dispute concerns all or a major part of the clauses, of a collective agreement. Here are the three categories:

- 1) *The particular demands that do not concern all the employees, but only a group of them;*
- 2) *The monetary demands which oblige the Company to spend money;*
- 3) *The non-monetary demands, that is, those that do not oblige the Company to spend a certain amount of money.*

Further, in the same majority report, the president describes what factors will affect the decisions given on the union demands. Here are the factors in question:

- a) *The proof of the union and of the Company.*
- b) *The practices and customs in similar industries and particularly those in the district;*
- c) *The law.*

7—PRODUCTION SLOW-DOWN

In the matter of the *Canadian General Electric Company*,¹⁵ the arbitration council had put before it a case of slow-down of production. The Company punished the employees by suspending them. In a very carefully worded award, the council recognizes nevertheless that the Company was justified in taking such a disciplinary measure.

As the question under dispute is a particular one and such a dispute is seldom brought before an arbitration council, we are reproducing here the part of the award in which the council specifies its attitude in the study of the case submitted for its attention.

« Essentially the case hinges on the truth or falsity of the charge concerning a slow-down; but the possibility of combined responsibility must be considered. Both parties recognize the existence of a slow-down, but responsibility is allocated differently. The board was unable, from the evidence, to accept fully the contention of the Union that the grievors were entirely innocent and were victims of the slow-down by others on the line. The evidence indicates at least passive acceptance of the situation. Some disciplinary action therefore was not out of place.

The board also recognized that the employees concerned were faced with a serious adjustment involving a group instead of an individual piece rate, altered job requirements and a substantial pay reduction. The Board took note of the fact that the change was introduced on very short notice and that the adjustment period was limited to four days. The difficulties of winning cooperation under the circumstances are understandable. »

8—MANAGEMENT RIGHTS

In the arbitration award regarding the *Compagnie de publication "La Presse"*,¹⁶ we wish to note, in the clauses suggested that should form part of the arbitration award, the following which concerns management rights and which is really characteristic.

"a) The union recognizes that the usual functions of managing and operating a newspaper, hiring employees and directing their work, belong to the Employer. These functions include the right of hiring, firing, promoting, transferring, suspending and dismissing for cause; the right to judge the qualifications required by every employee to properly fill the duties assigned to him; the right to set up the methods of publication of the newspaper, including the right to increase or decrease, limit or cease such publication, the right to publish or put into force regulations felt to be expedient for

(15) Department of Labour, Document No. 549, page 2; date of award: Jan. 2, 1952. Dispute between "Canadian General Electric Company" and "Electrical Workers Union, local 242". Members of council: president: H. D. Woods; employer's representative: H. J. Clawson; union representative: Jacques Perreault.

(16) Department of Labour, Document No. 542, page 7; date of award: Dec. 21, 1951. Dispute between the "Cie de publication, La Presse" and the "Syndicat de l'industrie du journal Inc.". Members of council: president: Rene Lippe; employer's representative: Robert Lafleur; union representative: Theodore L'Esperance.

the improvement of safety, efficiency or discipline, as well as the protection of employees inside or outside the building where the newspaper is published; the right to set the assignments or the functions of the employees;

b) The Employer admits that the exercise of the rights mentioned in this section does not release it from its obligations and that the rights of the employees which are derived from this agreement will not be prejudiced."

9—DENUNCIATION OF A UNION LEADER DURING AN ARBITRATION

In a minority report of the union representative, attached to the arbitration award rendered in the case of the *Association des Fabricants de vêtements de Québec Inc.*,¹⁷ the union representative notes the attitude of the Company representative who denounced a union

leader in pointing him out as the principal obstacle to agreement between the parties. Here is how his remarks are presented:

"At the public hearing of October 22nd, 1951, held at the Department of Labour, 89 Notre Dame St. East, Montreal, the employer's representative declared to the council of arbitration that no agreement was possible with the union because, as he stated: "A union that will cooperate is needed, not one that will fight."

To be more clear, the employer's representative declared the same day, and several times to the council of arbitration that an agreement would be possible if the union would cease using as a negotiating agent, one of its official delegates, Mr. Michel Chartrand.

This declaration is strictly contrary to the provisions of sections 20, 21, 22 of the Labour Relations Act, Chap. 162A, R.S.Q. 1944.

The least that can be said is that such pressure exercised before a council of arbitration to oblige a labour union to dismiss one of its employees only makes the discussions more bitter and places the council of arbitration in an awkward position."

(17) Department of Labour, Document No. 553, page 9; date of award: Jan. 29, 1952. Dispute between "Association des fabricants de vêtement de Québec, Inc." and "Fédération nationale des travailleurs de l'industrie du vêtement, Inc." Members of council: president: Clovis Dagenais; employer's representative: Jean Filion; union representative: Jacques Perreault.