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No. 13 of 1948

In the Privy Council

**ON APPEAL FROM THE COURT OF APPEAL
FOR SASKATCHEWAN**

IN THE MATTER of *The Trade Union Act*, Statutes of Saskatchewan,
1944 (second session) Chapter 69, and amendments thereto;

AND IN THE MATTER of certain orders made by The Labour Rela-
tions Board of Saskatchewan.

BETWEEN

THE LABOUR RELATIONS BOARD OF SASKATCHEWAN,

Appellant

—and—

JOHN EAST IRON WORKS, LIMITED,

Respondent.

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FOR THE APPELLANT, THE LABOUR RELATIONS BOARD OF
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RECORD

1. This is an appeal by special leave of the Court of Appeal for Saskatchewan, from the judgment of the said Court dated the 15th day of December, 1947, quashing with costs, but without the actual issue of a writ or writs of *certiorari*, five orders of The Labour Relations Board of Saskatchewan dated the 8th day of July, 1947, and finding section 5, paragraph (e) of *The Trade Union Act*, being chapter 69 of the Statutes of Saskatchewan for 1944 (second session), *ultra vires* the jurisdiction of the Legislature of Saskatchewan. pp. 31-32 p. 29

2. The full text of this Act as amended to date, will be found in the official prints which are separate documents on this appeal and are attached hereto. 10 The Trade Union Act, 1944.

Section 4

3. The Labour Relations Board of Saskatchewan was established by section 4 of *The Trade Union Act, 1944*, and consists of seven members appointed by the Lieutenant Governor in Council, one member being appointed chairman, and one member being appointed vice-chairman. Subsection (1) of Section 4 provides, *inter alia*, that

“The members of the board shall be selected so that the board shall be equally representative of organized employees and employers, and if the Lieutenant Governor in Council deems it desirable, of the general public.”

Object

4. The purpose of *The Trade Union Act, 1944*, is apparent from 10 the long title which appears in the original text of the statute in the following terms:

“*An act respecting Trade Unions and the Right of Employees to organize in Trade Unions of their own choosing for the Purpose of Bargaining Collectively with their Employers.*”

Section 3

This object is accomplished in a variety of ways, among them being the provisions of section 3 which endow employees with the right to organize and join trade unions and to bargain through representatives of their own choosing. For the purpose of determining the wishes of the majority of employees in respect of the choice of bargaining representatives, 20 section 5 gives the Labour Relations Board power by paragraph (a) to ascertain the appropriate unit of employees for purposes of collective bargaining, by paragraph (b), to determine the trade union which employees desire to represent them in collective bargaining procedures, and by paragraph (c), to require employers and trade unions representing the employees of such employer, to bargain collectively in good faith. For this purpose, “bargaining collectively” and “collective bargaining” are defined by paragraphs 1 and 3 respectively, of section 2.

Section 5,
paras. (a),
(b) and (c).

Section 8

5. For the purpose of assuring employees the right to choose 30 their bargaining representatives freely and without interference, subsection (1) of section 8 of the Act enjoins certain conduct on the part of employers and employers’ agents, such conduct being termed an “unfair labour practice”. These practices include interference, restraint or coercion of any employee in the exercise of his rights under the Act [para. (a)]; discrimination or interference in the formation or administration of a labour organization [para. (b)]; failure or refusal to bargain collectively with a trade union representing a majority of the employees of the employer, so designated by the Board [para. (c)]; refusal to deal with grievances during working hours [para. (d)]; discrimination in the hiring, tenure or terms of employment, or the use of intimidation or 40 coercion of any kind “with a view to encouraging or discouraging membership in or activity in or for a labour organization or participation of any kind in any proceeding” under the Act [para. (e)]; conditions of employment requiring an employee to abstain from joining or assisting

a trade union [para. (f)]; interference in the selection by employees of a trade union [para. (g)]; maintenance of any system of industrial espionage or the employment of spies [para. (h)]; any threat to shut down or move a plant in the course of a labour dispute [para. (i)]; and the declaration of a lockout or any change in terms or conditions of work while an application is pending before The Labour Relations Board, or a matter is pending before a board of conciliation under the Act, [para. (j)]. Unfair labour practices on the part of employees or persons acting on behalf of a labour organization, are defined by subsection (2) of section 8, these including use of coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a labour organization [para. (a)], and counselling or participating in a strike to commence while an application is pending before The Labour Relations Board or before a board of conciliation [para. (b)].

6. In addition to those already described, the Board is granted power, by paragraph (d) of section 5, to require any person to refrain from violations, of the Act or from engaging in any unfair labour practice; by paragraph (e), to require an employer to reinstate an employee discharged contrary to the provisions of the Act and to pay such employee the monetary loss suffered by reason of such discharge; by paragraph (f), to require an employer to disestablish a company-dominated labour organization; and by paragraph (g), to rescind or amend any of its orders or decisions.

Section 5,
paras. (d),
(e), (f) and
(g).

7. While The Labour Relations Board is required to make all orders and decisions concerning matters within the scope of the Act, these orders and decisions are filed in the office of the Registrar of the Court of King's Bench and pursuant to section 9, they become enforceable as judgments or orders of that Court. Provision is also made for the imposition of penalties upon summary conviction, in respect of unfair labour practices and for failure to obey orders of the Board. The Lieutenant Governor in Council, upon recommendation of the Board, may appoint a controller to take over the business, plant or premises of an employer who has wilfully disregarded or disobeyed an order of the Board, and to operate the same until satisfied that upon its return, such employer will obey the order of the Board.

Section 9

8. The jurisdiction of the Board over its own procedures is founded in sections 13, 14 and 14a, which provide for the making of regulations, the authority to hear evidence, and the serving of notices. Regulations have been promulgated under authority of section 13. No appeal may be taken from the orders or decisions of the Board, and while judicial review by way of the prerogative writs is nominally excluded, a considerable number of orders and decisions of the Board have been so reviewed.

Sections 13,
14 and 14a.

Section 15

9. Provision is made for the establishment of Boards of Conciliation for the settlement of labour disputes by sections 16, 17 and 18.

Sections 16,
17, 18.

Section 19 10. The Act also deals with the status of trade unions, and by
 providing that a trade union shall not be deemed to be unlawful by
 reason only that one or more of its objects are in restraint of trade,
 the law of the United Kingdom as enunciated in part, by *The Trade*
 Section 20 *Union Act, 1871*, 34 & 35 Vict., cap. 31, was introduced in Saskatchewan.
 Similarly, *The Trade Union Act, 1944*, provides that an act done by two
 or more members of a trade union, if done in contemplation or further-
 ance of a trade dispute, shall not be actionable unless the act would be
 actionable if done without any agreement or combination, thus intro-
 ducing provisions similar to section 1 of *The Trade Disputes Act, 1906*, 10
 6 Edw. VII, cap. 46 (amending *The Conspiracy and Protection of Property*
 Section 21 *Act, 1875*) of the United Kingdom. As in the case of *The Trade Union*
Act, 1871, the Saskatchewan *Trade Union Act, 1944*, provides that a
 trade union shall not be made a party to any action in any court of law.
 Section 22 Similarly, collective bargaining agreements may not be made the sub-
 ject of an action in any court.

Section 23 11. Special statutory terms are provided for collective bargaining
 agreements, these being the voluntary revocable check-off for trade union
 Section 24 dues, a one-year duration period for collective bargaining agreements,
 and a provision requiring trade union members to maintain their mem- 20
 Section 25 bership in the appropriate trade union, and requiring all new employees
 to become members within thirty days after the commencement of their
 employment.

12. All of the provisions of the Act fall within two categories.
 The first class relates to the functions of The Labour Relations Board
 in determining the trade union representing a majority of employees in
 any appropriate unit, and guaranteeing freedom of association in trade
 unions by preventing unfair labour practices by employers and employees
 These provisions are modelled upon *The National Labour Relations Act*,
 1935, United States Statutes, chapter 372, and are similar to *The National* 30
Wartime Labour Relations Regulations, P.C. 1003, of Canada, (February
 17, 1944) which have similar objects. The second class of provisions
 relates to the status of trade unions under the law, and in this respect,
The Trade Union Act, 1944, applies the law which has been in force in
 the United Kingdom for a considerable number of years.

Section 5(e) 13. Paragraph (e) of section 5 of *The Trade Union Act, 1944*, has
 as its objective, affirmative enforcement of the policy of the Act to
 eliminate unfair labour practices against employees who exercise their
 rights under the provisions of the Act. It endows The Labour Relations
 Board with power to order the reinstatement of an employee improperly 40
 discharged, and to require an employer to pay to such employee the
 monetary loss occasioned by such improper discharge. This authority
 is granted and may be exercised apart from the terms of any contract
 of employment between the parties and has no reference to the breach
 of any contract of service by an employer. It is designed to effectuate

the prohibition against unfair labour practices, and particularly the unfair labour practice described by paragraph (e) of section 8, subsection (1), enjoining discrimination in regard to hiring, tenure or terms of employment, and coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a labour organization, or participation of any kind in a proceeding concerning rights created by the Act. Section 8(1)(e)

10 14. In this case, six applications dated the 17th day of May, 1947, were filed with The Labour Relations Board by the United Steelworkers of America, Local 3493, of the City of Saskatoon, Saskatchewan, a trade union, all in terms similar to the Exhibit which appears as Document No. 18. It was alleged that the Respondent, John East Iron Works, Limited, on the 15th day of May, 1947, discharged from its employment effective the 23rd day of May, 1947, the following persons, being employees of the Respondent company, viz., Messrs. T. G. Germaine, G. M. Svendsen, J. H. Craigmile, J. E. Boryski, P. Troobitscoff and N. Troobitscoff, that each of these employees was discharged because he was a member of and/or active in the said trade union, and that the discharge of each of the employees constituted an unfair labour practice within the meaning of clause (e) of section 8, subsection (1), of *The Trade Union Act, 1944*. The trade union requested The Labour Relations Board to make an order in respect of each of the employees pursuant to clause (e) of section 5 of the Act, requiring the Respondent company to reinstate each in his employment and to pay to each the monetary loss suffered by reason of his discharge. Early in the proceedings, the trade union withdrew its application in respect of Mr. T. G. Germaine and The Labour Relations Board heard the other five applications at one and the same time with the consent of all of the parties concerned. pp. 51-52
p. 55, 11.1, ff.
p. 51, 11. 20, ff.
p. 55, 11. 8, ff.

30 15. The Labour Relations Board received evidence adduced by the trade union and the Respondent company, considered written representations and heard counsel for the parties, and on the 8th day of July, 1947, the Board ordered the Respondent company to reinstate each of the following employees, viz., Messrs. G. M. Svendsen, J. H. Craigmile, J. E. Boryski, P. Troobitscoff and N. Troobitscoff, as of that date, in its employment, and to pay to each of the employees concerned, the sum of \$200.80, being the monetary loss suffered by each of them respectively, by reason of his dismissal. Certified copies of the orders were filed in the office of the Registrar of the Court of King's Bench on the 15th day of July, 1947, and reasons for the orders were written by the Chairman, on behalf of the Board, and delivered to the parties. p. 12, 11. 37, ff.
p. 55

40 16. By notice dated the 6th day of November, 1947, the Respondent company moved in the Court of Appeal for Saskatchewan, for an order that a writ or writs of *certiorari* issue for the return to the said Court of the orders of The Labour Relations Board, and for an pp. 5-6

- pp. 8-9
pp. 51-63
- order of the said Court that the orders of the Board be quashed, and for costs. The notice was supported by an affidavit of Melville Austin East and Exhibits thereto.
- p. 10
17. Notice under the provisions of *The Constitutional Questions Act*, R.S.S., 1940, cap. 72, was served by the Respondent company upon the Attorney-General for Saskatchewan.
- pp. 11-16
18. On behalf of The Labour Relations Board were filed the affidavits of Norman R. Riches, Walter Kenneth Bryden, and Morris C. Shumiatcher.
- pp.16-17
19. The Court of Appeal for Saskatchewan, consisting of Martin, C.J.S., Gordon, MacDonald and Anderson, J.J.A., heard the application of the Respondent company at Regina on the 17th, 26th and 27th days of November, 1947, and reserved judgment until the 15th day of December, 1947, at which time The Honourable the Chief Justice of Saskatchewan delivered the judgment of the Court quashing the five orders of the Appellant Board, and holding paragraph (e) of section 5 of *The Trade Union Act, 1944*, to be *ultra vires* the Legislature of Saskatchewan. 10
- pp. 17-29
20. The Respondent company contended that paragraph (e) of section 5 of *The Trade Union Act, 1944*, was *ultra vires* the Legislature because it is legislation conferring upon The Labour Relations Board 20 judicial powers with respect to contracts of hiring and breaches thereof, being powers which are exercised and which have always been exercised by the Superior, District and County Courts, the judges of which are appointed by the Governor General.
- p. 20, 1. 45
p. 21, 1. 10
21. The relevant provisions of *The British North America Act, 1867*, concerning the appointment of judges are as follows:
- The B.N.A. Act, secs. 96-100
- “96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick. 30
- “97. Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.
- “98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.
- “99. The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons. 40

“100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.”

Legislative power in relation to the constitution, maintenance and organization of provincial courts of civil and criminal jurisdiction including procedure in civil matters, is confided to the provinces by clause 14 of section 92 of *The British North America Act, 1867*, which provides as follows:

“92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, Section 92 (14).

.....

“14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil matters in those Courts.”

20 By clause 13 of section 92, the provinces are given exclusive power to make laws in relation to

“13. Property and Civil Rights in the Province.”

Section 92 (13).

22. The Honourable Chief Justice of Saskatchewan, delivering the judgment of the Court, was of opinion that The Labour Relations Board is primarily an administrative body and that to that extent, its constitution was within provincial powers. He then stated that the courts referred to in section 96 of *The British North America Act, 1867*, and particularly the Saskatchewan Court of King’s Bench, “have always had jurisdiction in connection with the enforcement of contracts of hiring and awarding damages for the breaches thereof”. His Lordship then equated the remedy under paragraph (e) of section 5, to the breach of a contract of service and the awarding of damages therefor, and held that the Legislature, by enacting paragraph (e) of section 5, and empowering The Labour Relations Board to require an employer to reinstate an employee and to require him to pay the employee his monetary loss, conferred upon the Board judicial functions which are exercised by the courts, the judges of which could only be appointed by the Governor General under section 96 of *The British North America Act, 1867*, and that therefore, paragraph (e) of section 5 was *ultra vires*.

p. 21, 11. 37, ff.

p. 22, 11. 5, ff.

30 equated the remedy under paragraph (e) of section 5, to the breach of a contract of service and the awarding of damages therefor, and held that the Legislature, by enacting paragraph (e) of section 5, and empowering The Labour Relations Board to require an employer to reinstate an employee and to require him to pay the employee his monetary loss, conferred upon the Board judicial functions which are exercised by the courts, the judges of which could only be appointed by the Governor General under section 96 of *The British North America Act, 1867*, and that therefore, paragraph (e) of section 5 was *ultra vires*.

p. 22, 11. 27, ff.

p. 23, 1. 19

40 23. The Labour Relations Board of Saskatchewan submits that the Judgment of the Court of Appeal for Saskatchewan is wrong and that the said Judgment should be reversed for the following among other

REASONS

1. Because *The Trade Union Act, 1944*, is legislation in relation to labour relations within the Province of Saskatchewan, being a matter of property and civil rights in the Province within the meaning of clause 13 of section 92 of *The British North America Act, 1867*;

2. Because the Legislature of the Province is competent to create and appoint an administrative or judicial tribunal and to confer upon it the powers necessary to enable it to effectively discharge administrative and judicial functions where those functions are not normally performed by courts of justice; 10

3. Because the purpose of paragraph (e) of section 5 of *The Trade Union Act, 1944*, read in conjunction with paragraph (e) of section 8, subsection (1), is not the enforcement of a contract of personal service nor the recovery of damages for breach thereof;

4. Because *The Trade Union Act, 1944*, and particularly paragraph (e) of section 5, deals with the subject of employer-employee relations from a point of view different from that previously recognized and administered by any superior, county or district court; 20

5. Because The Labour Relations Board constituted by *The Trade Union Act, 1944*, is not a superior, county or district court within the meaning of sections 96 to 100, both inclusive, of *The British North America Act, 1867*;

6. Because The Labour Relations Board is not within the intendment of section 96 of *The British North America Act, 1867*;

7. Because the members of The Labour Relations Board are not usurping the powers of superior, county or district court judges within the meaning of section 96 of *The British North America Act, 1867*; 30

8. Because the functions of The Labour Relations Board are functions which were not exercised by a superior, county or district court, or by the judges thereof, in 1867;

9. Because the functions of The Labour Relations Board are of a character and design not generally recognized or administered by any superior, county or district court.

F. A. BREWIN

MORRIS C. SHUMIATCHER.

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