

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20070830
Docket: S075799
Registry: Vancouver

Between:

**The City of Vancouver and the Board of Parks
and Public Recreation (City of Vancouver)**

Plaintiffs

And:

**Canadian Union of Public Employees, Local 15 and
Canadian Union of Public Employees, Local 1004, and
their members, servants, agents and persons acting or
purporting to act on its behalf; John Doe, Jane Doe,
and all other persons unknown to the Plaintiffs picketing or
watching and besetting, obstructing, blockading,
intimidating at or near the premises or operations of the
Plaintiffs in the City of Vancouver, Province of British Columbia**

Defendants

Before: The Honourable Madam Justice Boyd

Oral Reasons for Judgment

In Chambers
August 30, 2007

Counsel for the Plaintiffs:

N.K. Trerise

Counsel for the Defendants:

L. McGrady
C.J. Foy

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** The plaintiffs, the City of Vancouver and the Board of Parks and Public Recreation, seek an injunction restraining and enjoining the defendants from obstructing, impeding and blocking ingress to and egress from the plaintiffs' property at what I will call the National Avenue Works Yard and the Manitoba Transfer Station or Work Yard.

[2] The application arises as a result of two incidents which occurred, I believe, on August 28, 2007, when two trucks driven by management personnel from the City of Vancouver Streets Division of the Engineering Department attempted to leave the National Avenue Works Yard. Certain union members blocked those trucks from leaving the yard, taking the position that the Streets Division management personnel were doing work which was not ordinarily performed within their division but rather was Solid Waste Division, that is, Sanitation Branch Work. They say that the City's actions constitute a breach of the Essential Services order in place, and further, a breach of the letter of understanding executed between the parties on July 30, 2007.

[3] There is a dispute between the parties as to what has occurred since these two incidents occurred on August 28th. The union says that no further blockage incidents have occurred. The City says this is only so since the Streets Division personnel have effectively been under a strict advisory from union members that they will be blocked if they attempt to do so. Accordingly they said no further attempts have been made.

[4] Whatever the case, it is clear that at the heart of this dispute is the issue of the scope of the work which falls within the job description of the Streets Division

workers prior to the strike. This issue is the subject of a series of affidavits from the parties on both sides, which affidavits are in direct conflict. For reasons which are still not entirely clear to me, the issue was not addressed at the time of the Essential Services hearing before the Board on June 28, 2007, which resulted in the Essential Services order of July 3, 2007.

[5] The City says that the matter was not pursued at the Essential Services hearing since it was understood and agreed that the Streets Division exempt staff would be free to remove and dispose of abandoned garbage in the downtown streets and alleyways. The union disputes this understanding and insists that while not pursued before the Board, the letter of understanding which followed was premised on the opposite assumption, namely, that Sanitation workers alone would attend to the removal and disposal of abandoned garbage.

[6] In my view, despite the union's position on this matter, this issue was never specifically addressed in the letter of understanding between the parties, which was executed on July 30, 2007. While the letter of understanding says the City shall, to the greatest extent possible, restrict its deployment of exempt staff doing non-essential work such that exempt employees only perform work that is ordinarily performed within their own divisions and the divisions are then enumerated, the parties never addressed any description of the work performed by the divisions. Thus the parties, perhaps without knowledge, were never *ad idem* in terms of understanding the parameters of work within each division. Hence, in my view, the union's charge that the City workers are in breach of the letter of understanding and are therefore before the court with unclean hands is a charge without any teeth at

this point, since the breach would only arise where there is a clear determination of what work was ordinarily performed within each division. Likewise, the City's charge that the picketers were illegally blocking trucks and engaging in what is tantamount to criminal activity in my view is also somewhat a charge without teeth, since whether the trucks in question driven by streets management staff were within their rights to do so also remains extant, at least at this juncture.

[7] I have given anxious consideration as to whether this is an appropriate case for the court to step in and address the matter by way of injunctive relief. Without engaging in any lengthy analysis of all of the many legal authorities, I will simply say that in my view, at this juncture, the Court must be very slow to intervene in the matter. I am mindful of Justice Esson's admonition in *Fletcher Challenge* to this effect. In my view that admonition ought to be applied here.

[8] I say this for several reasons. First, the strike, which is very clearly a legal strike, has now been under way for six weeks. By all parties' descriptions it has been a peaceful strike, although obviously not without tensions. But there has been no violence and to this point, there has been no need for any intervention by the court. Any issues which have arisen have apparently been promptly addressed before the Board, particularly in connection with essential services.

[9] Secondly, while I assume for the purposes of this hearing that the two incidents in question did occur as the City's personnel describe, as I have mentioned, they were not violent, there was no threat of violence; and there was no injury to person or to property. The union personnel, in my view, made it clear that

their actions were based on their interpretation of the letter of understanding or the memorandum of understanding and their belief, obviously deeply held, concerning which work had been done by what personnel in advance of the strike.

[10] Next I note that prior to the incidents the City had invited the union to mount a proper Section 68 application regarding this issue. I am told that application has now been filed by the union. At the conclusion of submissions I was provided with an e-mail in which the Board itself confirms it has scheduled a hearing to address this matter on Wednesday, September 5th at 9:30 a.m. While it is not entirely clear whether Mr. Harrison, who apparently is the City's counsel regarding those issues, will be available, I have every confidence that he will be, or that someone will be available. Such a full hearing, of course, differs vastly from an injunction hearing in the sense that the trier of the issues has an opportunity to see or hear the witnesses and to make a proper assessment of the conflicting evidence from the parties.

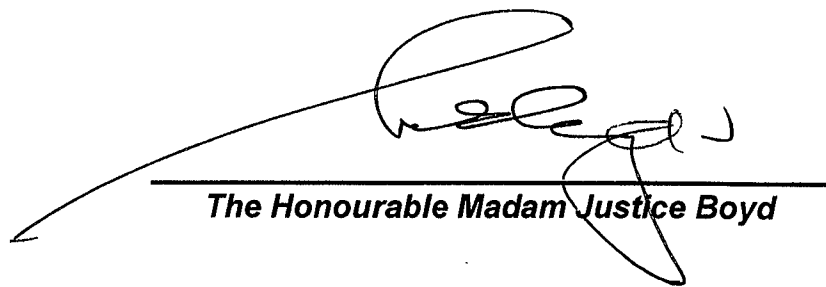
[11] Finally, I should say that in the interim the evidence is that trucks continue to come and go from the National yard and the Manitoba yard, albeit manned by Sanitation rather than by Streets Division management personnel. Provided that personnel other than Streets personnel are assigned, there is no issue that these trucks will continue to come and go from both yards.

[12] While the City's affidavit material raises the spectre of a public health or safety hazard which may arise if police and ambulance and other vehicles are not free to access the alleyways and streets of the downtown core, there is no evidence before the court that the outstanding and ongoing abandoned garbage pick up and

delivery work is completely beyond the capability of the roster of available Sanitation Department management personnel. I have been asked to draw that inference but there is no evidence before me on which I can draw such an inference.

[13] Thus, in all of the circumstances, I am loathe, as I say the court always will be, to step in and grant the extraordinary relief afforded by an injunction. I reject the notion that simply by virtue of these two incidents of obstruction having occurred it automatically follows that injunctive relief ought to be granted in order to preserve principles of public order and respect for the law.

[14] I am not persuaded that here there has necessarily been any deliberate flouting of the law. Rather, I see the dispute as a very focused one, very much centred on two conflicting and opposite perceptions of what work was done by a certain class of exempt worker within the City Engineering Department. This dispute is effectively a Section 68 dispute and in my view, it belongs before the Labour Relations Board, which is ready and waiting to address the matter quickly with all of its acknowledged expertise. Thus, I dismiss the application for an injunction.



The Honourable Madam Justice Boyd