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No. A960428
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	
CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL 602	***REASONS FOR JUDGMENT***
PETITIONER	***OF THE HONOURABLE***
AND:	***MR. JUSTICE HALL***
ATTORNEY GENERAL OF BRITISH COLUMBIA	
RESPONDENT	

Date and Place of Hearing: February 5 & 6, 1996
Vancouver, B.C.

Rick L. Edgar
682-3131 — Counsel for the Petitioner, Construction and General Workers' Union, Local 602

Peter A. Gall — Counsel for the Respondent, B.C. Pricare et al.

Jean M. Walters — Counsel for the Respondent, Attorney General of British Columbia

John Hodgins — Counsel for the Respondent, British Columbia Nurses' Union

Susan Lagace — Counsel for the Respondent, Hospital Employees' Union

D.M. Sartison — Counsel for the Respondent, Health Employers Association of British Columbia

Ken Curry — Counsel for the Respondent, B.C. Government and Services Employees' Union

1 In this case the petitioner union applies for orders as follows:

> An Order declaring that Regulations 2 and 10 of the ***Health Services Labour Relations Regulations*** adopted pursuant to the ***Health Authorities Act*** are invalid insofar as they purport to remove certificates of bargaining authority from particular trade unions;
>
> An Order declaring that Regulations 2 and 10 of the ***Health Services Labour Relations Regulations*** adopted pursuant to the ***Health Authorities Act*** are invalid insofar as they purport to prohibit trade unions from applying for certification in the health sector;

2 As the material discloses, the petitioner local union has four certificates of bargaining authority for four separate health facilities on Vancouver Island, three of which are private and one of which is a non-profit facility. The Regulations in question passed pursuant to the ***Health Authorities Act*** read as follows:

> 2.(1) The following are the appropriate bargaining units in the health sector:
> (a) residents;
> (b) nurses;
> (c) paramedical professionals
> (d) health services and support -- facilities subsector;
> (e) health services and support -- community subsector.
>
> (2) Appropriate bargaining units are multi-employer units.
>
> (3) Through the consolidation of existing bargaining units and establishment of new units under Part 3, the trade unions listed in Column 1 must each be certified by the board for an appropriate bargaining unit listed opposite in Column 2:

Column 1	Column 2
(a) PAR-BC	residents;
(b) BCNU	nurses;
(c) HSA and BCGEU	paramedical professionals
(d) HEU, BCGEU and IUOE, Local 882	health services and support -- facilities subsector;
(e) BCGEU, HEU and UFCW, Local 1518	health services and support -- community subsector.

(4) All current and future unionized health sector employees must be included in an appropriate bargaining unit and represented by the trade unions referred to in subsection (3).

(5) No trade union may apply for certification in place of any of the trade unions referred to in subsection (3) during the 3 years following the day on which this regulation comes into force.

...

Representational votes

10.(1) Unless there are merger or transfer agreements between the union that is certified on the day on which this regulation comes into force and one of the trade unions identified to be a choice in a representational vote, the board must determine by representational vote, on an employer by employer basis, which trade union will be the bargaining agent as follows:

...

(f) employees represented by CGWU, Local 602 at Clovelly Terrace Hospital Ltd., Decker Management(Sandringham

> Hospital), Preferred Care Corporation (James Bay Lodge) and Vancouver Island Housing Association for the Physically Disabled (1976) (Nigel Home) must choose to be included in the HEU, BCGEU or IUOE, Local 882 health services and support -- facilities subsector unit;

3 In order to understand some of the background of this matter, I am annexing hereto reasons delivered concurrently in the case of ***British Columbia Association of Private Care (B.C. Pricare) et al. v. Attorney General of British Columbia***, Vancouver A953779, and I will therefore not in these reasons repeat the narration of the facts that underlay that proceeding.

4 In essence, counsel for the petitioner union makes the point that the provisions of the ***Health Authorities Act*** do not properly found or authorize the Regulations in question and that the recommendations made by Commissioner Dorsey which were enacted into legislative effect by virtue of the Regulations was beyond the scope of authority granted to the Commissioner. The statutory provision in the ***Health Authorities Act*** that in my judgment are of particular significance to the instant application are ss. 11.1 and 11.2 set out in the reasons annexed hereto pertaining to the other action. Mr. Edgar of counsel for the petitioner union relied particularly upon ss. 11.1(2), (3) and (4) which read as follows:

(2) The commissioner must consider the following:

(a) the new employment relationships that will be established as a result of restructuring this Act;

(b) the need to promote integration of health care delivery and to enable the development over time of Provincial consistency in terms and conditions of employment;

(c) the history of union representation in the health sector.

(3) The commissioner must make recommendations regarding the composition of appropriate bargaining units that would address the considerations set out in subsection (2) and may make other recommendations the commissioner considers appropriate.

(4) The recommendations under subsection (3) may include, without limitation, recommendations regarding multi-employer certification and councils of trade unions for the health sector.

Counsel to the petitioner suggested that its rights were being adversely affected by the Regulations passed as a result of recommendations by the Commissioner. Counsel for the Attorney General, arguing in support of the validity of the impugned Regulations, suggested that the jurisprudence supports the proposition that there is no vested property right to its relationship vested in a bargaining agent and that to that extent, the argument of the petitioner here was ill-founded. Counsel for the Attorney General mentioned s. 142 of the ***Labour Relations Code***

(a section that in this form or predecessor form has been in the legislation for many years) as supportive of the proposition that there is a wide discretion vested in the Labour Relations Board to deal with the certification or decertification of a trade union. That particular section reads as follows:

> 142. The board, on application by an party or on its own motion, may vary or cancel the certification of a trade union or the accreditation of an employers' organization.

6 That is a section of the ***Labour Code*** of this Province that would be generally applicable, I take it, to a great many situations. The ***Code*** is the general statutory regime applicable in Provincial labour relations matters. But returning to the instant case, I find myself asking the following question. Whatever one calls it, is there not some proprietary or vested relationship or interest of this petitioner union that is here being adversely affected by the Regulations? I am of the view that there is and because that is so, then I believe we should carefully scan the relevant legislation, namely the ***Health Authorities Act***, to be sure that there is to be found therein expressly or by clear implication an adequate source of authority for the disruption of this existing relationship and the provision as well for a future inability of the petitioner to seek to continue the existing bargaining relationship. It is clearly a case where the analysis of the Chief

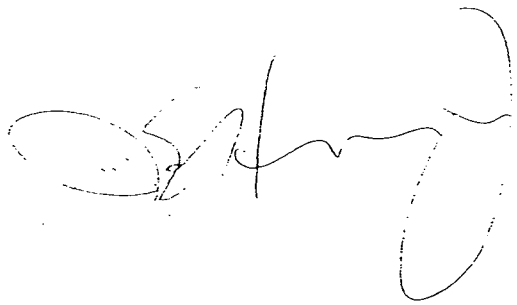
Justice in the 1988 civil liberties case referred to in the accompanying reasons seems to me to apply with considerable force. I think that here there seems to be what I might term a more fundamental disruption or interference with the extant situation of this petitioner than I would have thought was the case concerning the petitioners in the related action who were there being placed into a larger and perhaps somewhat different bargaining unit grouping.

7 I note that ss. 11.1 and 11.2 of the statute refer to "units appropriate for collective bargaining", "multi-employer certification" and "councils of trade unions". There is no reference to "bargaining agents" although I accept that to a degree there is a relationship between "agents" and "units". I do not overlook the fact that pursuant to the terms of s. 11.1 of the statute, the Commissioner is to consider the history of union representation in the health sector and is to make recommendations regarding the composition of appropriate bargaining units and particularly that the Commissioner "may make other recommendations the Commissioner considers appropriate". The last emphasized language is of a broad and general nature. But I am not convinced that it gives the Commissioner an infinitely roving commission to make any recommendation that he may see fit relative to labour relations matters in this health care field. I think where there are such fundamental changes as seem to be being effected relative

to this petitioner, that I should be tolerably certain that, either expressly or by clear implication, the language of the statute authorizes the achievement of this by Regulation, (or of course by the terms of the statute itself). As I noted earlier, s. 142 of the present ***Labour Relations Code*** gives that power in express terms to a tribunal, namely, the Labour Relations Board. With great respect to the argument of counsel for the Attorney General and those other counsel for the intervenors who supported her suggested interpretation, I am just not able to discern any clear basis of authority in this legislation, the ***Health Authorities Act***, to permit the Regulations affecting this petitioner to have the effect suggested of removing their status and future ability to continue as bargaining agent.

8 However, having said all that, I am conscious of the fact that the courts should be reasonably deferential to legislative judgments and I think we ought to go no further in this case than is necessary for the decision. Whilst I do not believe the Regulations have the capacity or are valid to presently sterilize or prevent in future the collective bargaining relationship between this petitioner and those bodies with which it is currently in such a relationship, I believe that the Commissioner did have in general the power to address the question of the dimensions and composition of appropriate bargaining units in the health sector. That is to say, in other situations where the Regulations would not affect

presently existing interests of the sort exemplified by the petitioner's situation, I believe that the Regulations can and should have full effect. *Inter alia*, they may have an effect to prevent from entering the field agents not referred to in the Regulations. I would therefore not strike them down in total but would find simply that they do not authorize interference with the status or future activities of this petitioner. I should add that it may be that the Labour Relations Board might arguably have jurisdiction under s. 142 noted, *supra*, to address the issue but that issue is not before me and I do no more than raise that possibility. All I say is that I do not see that the matter can be accomplished under the rubric of the present Regulations passed under the ***Health Authorities Act***. It follows from this that the petitioner succeeds in its application to have the Regulations declared ineffective to divest it of its bargaining agent status. Again, I find myself in some uncertainty as to what costs result should flow from this and if the parties are unable to agree on that, I may be spoken to.



February 29, 1996
Vancouver, B.C.