

No. A901385
No. A901386
No. A901388
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

June 15, 1990
Vancouver, B.C.

6	BETWEEN:)	
7	HER MAJESTY THE QUEEN IN)	REASONS FOR JUDGMENT
8	RIGHT OF THE PROVINCE OF)	OF THE HONOURABLE
9	BRITISH COLUMBIA)	THE CHIEF JUSTICE
)	
9	PLAINTIFF)	
10	AND:)	
11	UNION OF PSYCHIATRIC NURSES,)	
12	BRITISH COLUMBIA NURSES)	
13	UNION and BRITISH COLUMBIA)	
	GOVERNMENT EMPLOYEES UNION)	
)	
13	DEFENDANTS))	

14	D. JORDAN, Esq., Q.C.)	
15	MS. S.P. ARNOLD)	counsel for the plaintiff
16	R.J. KAARDAL, Esq.)	
17)	
18	R.L. EDGAR, Esq.)	counsel for the defendants
19	R.K. McDONALD, Esq.)	

THE COURT (Oral): These are applications by the plaintiff in three actions, all of which, however, for present purposes, I regard as raising the same issues. The background is that the defendant unions are the employees of the Government in various mental hospitals. There are three actions because there are three separate institutions involved and the specific factual issues are somewhat different in respect of each.

The only unions concerned with these motions are the first two, the BCGEU does represent certain

1 employees, but is not concerned in any way with the
2 relief sought in these applications.

3 The first two unions are engaged in a legal
4 strike. An Order was made by the Industrial
5 Relations Council pursuant to its jurisdiction
6 under Section 137.8 of the Industrial Relations Act
7 to designate facilities, productions and services
8 necessary or essential to prevent immediate and
9 serious danger to the health, safety or welfare of
10 residents of the province. The subject matter of
11 the Order is essentially the question of the
12 staffing levels to be maintained in order that
13 essential services can be provided.

14 The strike started on June 1st. The actions were
15 launched on June 12th and, on that day, an ex parte
16 application was made to find the Unions in contempt of
17 court for not complying with the terms of the Council's
18 Order.

19 When that application came before the court, leave
20 was given to give short notice of the application
21 returnable on Wednesday, June 13th. At that time
22 counsel for the unions appeared, asked for an
23 adjournment and was granted an adjournment until this
24 morning. In the meantime the plaintiffs launched fresh
25 motions covering the same ground as the original ones,
26 but adding, amongst other things, a claim for an Order
27 in the nature of a mandatory injunction requiring the

1 Unions to comply with the LRC Order.

2 By reason of the provisions of Section 30 of the
3 statute, it falls to this court to enforce the Order of
4 the IRC as if it were an Order of this court. That
5 situation has given rise to a number of decisions to
6 which I need not refer in detail, but which do give rise
7 to some difficult and sensitive issues.

8 The Unions made a preliminary objection to the
9 applications for contempt this morning. I reserved
10 decision on those and proceeded to hear only the
11 application for injunctive relief. I do not know
12 whether there is any precedent for such an application,
13 but it may have been inspired by some comments which I
14 made when the matter was before me on June 13th. It
15 seems inappropriate in many cases to move immediately to
16 a charge of contempt as a means of enforcement and it is
17 necessary for the court to approach these issues having
18 regard to the inherent complexity and sensitivity of the
19 kinds of problems that arise out of legal strikes. That
20 being so, it appears to me that for the court to grant
21 an Order in the form of a mandatory injunction may be an
22 appropriate step towards enforcement of the IRC Order,
23 particularly where an issue may have arisen as to what
24 is involved in complying with the Order.

25 Now, as the matter first came before me the
26 position of the plaintiffs was that this was a clear
27 case of the Unions deliberately flouting the Order of

1 the Council with knowledge that it had been filed in
2 court and had thus become a court Order. If I found
3 that to be the case I would have no hesitation in
4 granting an injunction as a step towards enforcement of
5 the Order and to remove whatever ambiguities and doubt
6 might properly be removed in that way.

7 The evidence, however, does not satisfy me that the
8 Unions have deliberately flouted the Order or that
9 indeed that they have breached it. The crucial
10 paragraph in the Order of the Labour Relations Council
11 is 2(ii).

12 "The Unions shall instruct their members
13 employed at Woodlands, and scheduled to
14 perform work in accordance with this
15 Order, to perform the job duties and
16 provide the services as directed by the
17 Employer to prevent immediate and serious
18 danger to the health, safety or welfare
19 of the residents and patients at
20 Woodlands. The number of employees
21 designated to provide those services are
22 set out in Schedule 'A' attached hereto.
23 The Employer is directed to designate
24 which employees shall work in accordance
25 with the terms of the Collective
26 Agreement unless the parties are able to
27 reach agreement on this issue."

28 With respect to the allegations that the Unions have
29 flouted the Order and, in particular, with respect to
30 the terms of that paragraph of the Order, the Unions
31 through Mr. Wenham's affidavit say this:

32 "At no time has the Employer, or any
33 representative of the Employer, of
34 employees employed at Woodlands contacted
35 the U.P.N. to advise the U.P.N. that they
36 have designated and scheduled individuals
37 to perform work in accordance with the
38 Industrial Relations Council Order. In

1 the event that the plaintiff complies
2 with the Industrial Relations Council
Order and:

3 (a) designates and schedules members of
4 the B.C.N.U. and U.P.N. working in
Woodlands to perform work in accordance
5 with that Order, and

6 (b) advises us of same,

7 We will instruct our members in
8 accordance with the Industrial Relations
Council Order. To date, the plaintiff
has not done so."

9 "12. At no time has the U.P.N. willfully
10 disobeyed the Industrial Relations
Council Order filed in the within action.
11 The U.P.N. has always believed that the
Employer is required to schedule and
12 designate employees to work and advise us
of same as set out in paragraph 9 of this
13 my affidavit."

14 "13. It is simply impossible for the
U.P.N. to instruct members to go to work
15 as scheduled and designated when it has
not been advised of any scheduling and
16 designations."

17 The Employer submits that the Union is deliberately
18 misinterpreting the language of the Council's Order and
19 that what it really means is that the Union is to give
20 general instructions to all of its members to comply
21 with the Order and, in effect, to instruct them that
22 when they are designated by the Employer as essential
employees they must go to work.

23 In my view, the Unions' interpretation of the
24 clause is not an unreasonable one. The issue, as I have
25 said, arises under Section 137.8 of the Industrial
26 Relations Act under the heading "Essential Services". I
27 think some support for the Unions' view is to be found

1 in subsection 3 of that section which reads:

2 "Where the Council designates facilities,
3 productions and services under subsection
4 (1)(b), the Employer and the Trade Union
5 shall supply, provide or maintain in full
6 measure those facilities, productions and
7 services and shall not restrict or limit
8 a facility, production or service so
9 designated."

10 What is of interest there is that it is the Trade Union,
11 not the members of the Trade Union, who are to supply
12 the services. That is consistent with the Unions'
13 interpretation. However, that is not a point upon which
14 I reach an entirely final conclusion. It is enough to
15 say that the Unions' interpretation is not unreasonable.
16 I cannot find that the Union did not honestly believe
17 that to be the correct interpretation and on that basis
18 I cannot find, in taking that position, it breached the
19 terms of the order.

20 There is another basis on which the plaintiff says
21 it is clear that the Unions flouted the Order. In the
22 plaintiff's affidavits, it appears that on the morning
23 of June 12th a great many of the Union members who had
24 been working to that point left their employment
25 apparently after receiving telephone calls from the
26 union. From that I am invited to infer that there was a
27 decision on June 12th to take active steps to subvert or
flout the terms of the Council Order because again, as I
am asked to infer, since the strike started on June 1st
those employees could only have been working under the
terms of the Essential Services Order.

1 A great deal of emphasis is also placed on a "job
2 action update" which was put out by the Union on June
3 12th which includes an admonition to its members that
4 they are to "stay on strike and not return to work until
5 directed to by the Union". What I find of particular
6 interest in that notice is the first paragraph under the
7 heading "All Out Strike". The first paragraph says
8 this:

9 "The Union called a strike for all U.P.N.
10 and B.C.N.U. members in all facilities in
11 the hospital component effective 9:30
12 a.m. this morning."

13 Mr. Edgar for the Union stated although he acknowledged
14 he did not have direct evidence of this, that his
15 understanding was that there had not been anything like
16 a full withdrawal of services until June 12th and it
17 therefore could not be reasonably inferred that
18 employees working until that day had been working under
19 the terms of the Essential Services Minimum Staffing
20 Provisions. I think, when regard is had to the language
21 of the job action update, it appears entirely likely
22 that that is the case and that it was only on that day
23 that a full strike was begun, and only then that a sharp
24 issue arose as to what would constitute compliance with
25 the Order.

26 The evidence from which I am asked to draw the
27 contrary inference is fragmentary. There is nothing
like a direct statement put forward by the Employer.
That being so I cannot conclude that the withdrawal,

1 apparently on quite a broad scale, of services on the
2 morning of June 12th was a deliberate flouting of the
3 Order.

4 It is clear that some staffing continues to be
5 provided. That being so, I am not prepared to find that
6 there was any breach. The Unions have recognized,
7 notwithstanding their dislike of the Industrial
8 Relations Council and their boycott of its hearings,
9 that the law requires them to comply with the Orders
10 made by that Council under the jurisdiction conferred on
11 it by statute.

12 I do not propose to spell out in any greater detail
13 than I have what is involved in compliance. The
14 Council, of course, has jurisdiction to clarify, vary
15 and amend its orders if the parties cannot agree on how
16 those terms should be applied.

17 A number of issues were raised by counsel as to the
18 meaning of paragraph ii. The record before me does not
19 permit me to resolve those disputes. For instance, the
20 Union says that the word "designate" in the last
21 sentence means designate in accordance with the term of
22 the Collective Agreement. The Collective Agreement is
23 not in evidence and so one cannot know whether it deals
24 with the subject of designation. The Employer says that
25 the words "in accordance with the terms of the
26 Collective Agreement" modify the word "work". I suspect
27 that the parties have quite a clear understanding of

1 what is meant by that sentence, but I am in no position
2 to resolve the dispute beyond saying that, as I already
3 have, the Unions' interpretation appears to me not
4 unreasonable on the basis of what is before me.

5 It follows that the application for an injunction
6 must be dismissed. With respect to the applications for
7 contempt, while I heard only the preliminary objections
8 with respect to those applications, it necessarily
9 follows from what I have said that there is no basis for
10 a finding of contempt so those applications are
11 dismissed also.

12 The Employer in its Notice of Motion sought costs
13 between solicitor and client. Perhaps that is merely
14 fashionable but I think a plaintiff who seeks costs in
15 these matters as between solicitor and client, if it
16 fails, should be prepared to pay costs as between
17 solicitor and client and that will be the Order, such
18 costs to be paid forthwith after taxation.

19 Is there anything further, gentlemen, that I should
20 deal with before we adjourn?

21 MR. JORDAN: No, my lord.

22 MR. EDGAR: No, my lord.

23 THE COURT: All right, thank you.

