GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.8 1995

BETWEEN:

LIBERTY CLUB LIMITED

Appellant

v

[1] HONOURABLE ATTORNEY-GENERAL
[2] THE HONOURABLE EDZEL THOMAS
[3] MINISTER OF LABOUR

Before:

The Hon. Mr. C. M. Dennis Byron	Justice of Appeal
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal [Ag.]

Appearances: Ms. Rita Joseph for the Appellant
Mr. Michael Lindo, Solicitor-General for the Respondents

1995: November 29;
1996: January 29.

JUDGMENT

BYRON, J.A.

On 7th June 1994 the Minister of Labour held a poll at the appellant's La Source Hotel after the Grenada Technical and Allied Workers Union [T.A.W.U.] and the Grenada Manual Maritime and Intellectual Workers Union [G.M.M.I.W.U.] had applied to be certified as the bargaining agent for workers employed at the Hotel. The results showed that of the 225 workers employed, 102 [or 45%] of the employees participated in the poll, 70 voted for T.A.W.U. and 23 for G.M.M.I.W.U. On 14th June 1994 the appellant was notified that the Minister had certified T.A.W.U. as the bargaining agent.

On 24th June 1994 the appellant commenced proceedings by way of Notice of Motion challenging the issue of the certificate on the grounds that T.A.W.U. did not have the majority of the workers employed at the hotel as required by law and that the Minister did not issue the certificate within the period prescribed by law. The matter

came on for hearing on 26th September 1994 before Moore J. Reserved judgment was delivered on 8th May 1995 dismissing the appeal with reasons to follow. In these reasons which were delivered shortly before the appeal came on for hearing on 29th November 1995 the learned trial Judge indicated that he was completely impressed with the arguments of the Hon. Attorney-General, Dr. Francis Alexis and, relying on the cases of **Knowles v Zoological Society of London** (1952) 2 All ER 595, **Re Young and Granvilles Ltd** (1918) 39 DLR 629 (REF.4) and a Technical Memorandum to the Government of Grenada from the International Labour Organisation, concluded that the majority is attained when a union obtains the votes of more than 50 per cent of the workers actually casting votes in a poll. He also held that the requirements as to time were not mandatory and that the issuance of the certificate by the Minister on 13th June 1994 effected a sufficient compliance with the law.

Counsel for the appellant contended that the learned trial Judge was wrong in his interpretation of the provisions of the **Trade Unions Recognition Act, Cap. 325** of the revised laws of Grenada [the Act], which she submitted required the Minister to ascertain whether more than 50 per cent of the workers employed at the hotel were members in good standing of the union applying to be the bargaining agent, and mandated him to issue his certificate and inform all parties within three days after the poll.

This appeal, therefore, requires the interpretation of certain provisions in the Act in order to determine when the majority is attained. The relevant sections are:

> "**Section 3[1]** A trade union claiming to have as members in good standing a majority of workers of an employer in a unit that is appropriate for collective bargaining shall, subject to the provisions of this Act, make application to the Minister to be certified as the bargaining agent of the workers in the unit."
>
> "**Section 4[2]** The Minister, within seven days after the receipt by him of an application, shall institute a poll of the unit specified, in order to determine whether the trade union making the application includes as members in good standing a majority in the unit appropriate for collective bargaining."
>
> "**Section 4[4]** Within three days after the poll has been conducted, the Minister shall issue his certificate to the union gaining the requisite majority as the bargaining agent for that unit and shall inform all interested parties that he has done so."

THE CONTEXT

The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. The relevance and extent of the statutory context as an aid to the ascertainment of this intention was described by Sir Vincent Floissac, C.J. in **Savarin v Williams**, Dominica Civil Appeal No.3 of 1995:

> "legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention."

It is well established that the long title of an Act forms part of its context and may be looked at for the purpose of interpreting the statute as a whole. See Halsbury's Laws of England 4th ed. Vol.44 para. 812. The long title to the Act states:

> "AN ACT to provide for the compulsory recognition, by employers, of trade unions that represent a majority of workers."

This title clearly indicates the intention of the legislature to provide for the compulsory recognition of trade unions that represent a majority of the "workers employed", as distinct from providing for the compulsory recognition of trade unions representing a majority of "workers who participated in a poll" which could comprise a minority of the workers employed as in fact occurred in this case.

An interpretation of sections 3[1] and 4[2] to require that a union must have as its members a majority of the workers of an employer to be certified as the bargaining agent of the workers in that unit gives effect to the purpose declared in the long title, and would accord with the statutory context.

In the case of **Knowles v Zoological Society of London** (1959) 2 All ER 595 the court had to interpret a section in the bye-laws of the Society which made provision for enabling new bye-laws to be made.

It held that the words "majority of fellows present at the meeting and entitled to vote thereat", was the proper construction of the words "majority of fellows entitled to vote" because [i] their context was directed to a particular ordinary meeting; [ii] it was a

convenient interpretation because it would not be practicable to know which fellows were disqualified by absence from the country or unable to vote by being in arrears with subscription; [iii] it was consistent with other provisions of the charter which conferred power on a three-quarters majority of those present at a meeting to alter the provisions of the charter which was a document of far greater consequence than the bye-laws. Although the learned trial Judge relied on this case the principles to be deduced from it seem to support the opposite conclusion advocated by the appellant because [i] The immediate context of the word majority is self explanatory; it is "majority of the workers in a unit that is appropriate for collective bargaining"; [ii] it is convenient to interpret majority to mean that more than 50 per cent of the workers in the unit, in order to avoid absurdity. For example, if only 10 people had participated in the poll it would clearly be absurd for the union gaining a majority of those votes to be considered the bargaining agent for the 225 workers at the hotel; [iii] this meaning is consistent with the meaning of the long title of the Act.

In the Canadian case **Re Young and Glanvilles Ltd** (1918) 39 DLR 629 (REF.4) it was held that the phrase "majority vote" meant majority of those actually voting and not of those entitled to vote. Beck J. said at page 631:

> "...I am not satisfied that the legislature intended more than that the by-law should be carried by a majority of the electors actually voting; anything more than this is so unusual that I feel satisfied that if it was intended it would have been made unquestionably clear".

The word "majority" is qualified by the word "vote" and that phrase taken as a whole, could clearly mean majority of those voting. In our case, on the other hand, the word "majority" is qualified by the phrase "of the members in the unit appropriate for collective bargaining". Those words cannot be said to show an intention to allow the certification of a union representing no more than a majority of those members actually voting.

THE STRICT CONSTRUCTION

The rule of interpretation [to which Beck J. had referred therein] that, unless they clearly and unambiguously intend to do so, statutes will not be construed so as to vary existing practices, limit common law rights or invade constitutional freedoms is well established. See Halsbury's laws of England 4th ed. Vol.44 para 904 and 905.

Counsel for the appellant argued that in legislation like this the rule was applicable because collective bargaining diminished the right of the individual worker to make his own contract and his constitutional freedom to associate with a union of his own choice. The respondent argued in response that the constitutionally guaranteed freedom to associate and the common law rights of a worker to make his own contract are not violated by collective bargaining. However, there was really no issue here about the legitimacy of the institution of collective bargaining.

This rule of construction requires the Court to ensure that effect is given to the intention of Parliament, applying as one premise the concept that clear and unambiguous language is required to express variance with existing rights.

In this case, if one were to look at the words of the statute the intention of Parliament as to the meaning of majority is quite clear and unambiguous. The words clearly indicate that a "majority of the members in the unit appropriate for collective bargaining" is required. This wording excludes the concept of the majority of members who actually cast ballots. The Act does not provide for an election between Unions. It requires that a union must include the majority of workers employed in order to be certified as bargaining agent.

THE PURPOSE

In **Pepper v Hart** [1993] 1 All E.R. 42 at 50, Lord Bridge explained the modern purposive approach:

> "The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared

> to look at much extravenous material that bears on the background against which the legislation was enacted."

In an attempt to apply a purposive approach the learned trial Judge looked at provisions in a Technical Memorandum sent to the Government of Grenada by the International Labour Organisation.

It was obvious that this document was not a suitable aid for the interpretation of the Act. The effluxion of time between the enactment of the Act in 1979 and 1993 when the memorandum was circulated disqualifies it from being part of the statutory context. In addition, it purported to contain proposals for amending, not explaining, the Act and was therefore not an appropriate source from which to deduce the purpose of the legislature in enacting the Act, as it reflected changes or developments in policy.

In any event it seems to me that the proposed sections on which the learned trial Judge relied did not support his conclusion. Section 29[1] stated:

> "[1] Subject to this Act, the Minister shall certify as the exclusive bargaining agent, that Trade Union which he or she is satisfied has, on the relevant date more than 50 per cent of the employees in the appropriate bargaining unit as members in good standing."

In my opinion this conveys the same idea as the existing section 3[1]. Removing the word majority and replacing it with "more than 50 per cent of the employees" clarifies the idea that the bargaining agent must represent more than half of the employees.

> "29[2] Where it appears to the Minister that more than one trade union has as members in good standing more than 50 per cent of the employees comprised in an appropriate bargaining unit he or she shall certify as the bargaining agent that trade union which has the greatest support of the employees in the bargaining unit determined by preferential ballot, being in any event more that 50 per cent of those employees who cast ballots."

This recommendation means that if more than 50 per cent of the employees are members of unions, a union with more than 50 per cent of those members can be certified as the bargaining agent. This is a proposal to develop the existing law by introducing the concept that employees could be represented by a bargaining agent if more than half of them are members of unions provided that one union can gain the support of more than

50 per cent of those who cast ballots. Even if this provision was in fact the law it would not have supported the conclusions of the learned trial Judge, because only 45 per cent of the employees voted. This proposed section would therefore have required the Minister to refuse to certify either of the competing unions as the bargaining agent.

The proposed section 29[2] demonstrates a manner in which Parliament could have clearly and unambiguously expressed an intention to define majority in terms of those employees who voted as it draws a distinction between "more than 50 per cent of the employees" and "more than 50 per cent of those employees who cast ballots".

THE PLAIN MEANING

Finally, the words of the statute being so clear and unambiguous they do not require any other than the most elementary and yet powerful rule which is stated in Halsbury's Laws of England 4th ed. Vol. 44 para 863:

> "In construing the Act the Court must seek to ascertain Parliament's intention as expressed in the Act, considering it as a whole and in context. If words are plain and unambiguous they must be given their ordinary and natural meaning."

The plain and unambiguous meaning of the words are simply that the Minister was required to certify a union which could demonstrate in a poll that it included as members in good standing a majority of the workers employed at La Source Hotel. T.A.W.U. did not gain the requisite majority and should not have been certified. The Minister, therefore, acted ultra vires the provisions of the Act in issuing his certificate, and it should accordingly be set aside.

This entirely disposes of the appeal and makes it unnecessary to consider the question of the time within which the certificate should issue.

ORDER

I would therefore allow the appeal, reverse the decision of the court below, set aside the Minister's Certificate and order the respondent to pay the appellant's costs, here and in the court below to be taxed if not agreed.

.....
C.M. DENNIS BYRON
Justice of Appeal

I Concur.

.....
SATROHAN SINGH
Justice of Appeal

Concur.

.....
ALBERT MATTHEW
Justice of Appeal [Ag.]