

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV 2010/0370

IN THE MATTER OF THE CIVIL PROCEDURE RULES 2000

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION
OF THE MINISTER OF LABOUR NOT TO PROCEED WITH THE SCHEDULED POLL
AT INDEPENDENCE AGENCIES LTD. ON JULY 14TH, 2010

IN THE MATTER OF AN APPLICATION BY THE TECHNICAL AND ALLIED WORKERS
UNION (GTAWU) FOR AN ORDER OF MANDAMUS COMPELLING THE SAID
MINISTER TO CONDUCT THE SAID POLL IN ACCORDANCE WITH THE LAW

AND

IN THE MATTER OF SECTIONS 1, 33, 34 & 35 OF THE LABOUR RELATIONS
ACT 1999

AND

IN THE MATTER OF SECTIONS 1(A), 11 & 16 OF THE CONSTITUTION

BETWEEN:

GRENADA TECHNICAL & ALLIED WORKERS UNION
(GTAWU)

APPLICANT

AND

HONOURABLE KARL HOOD
(MINISTER OF LABOUR)

RESPONDENT

Appearances:

Mr. Ruggles Ferguson for Applicant

Mr. Darshan Ramdhani with Mr. Adebayo Olowu for Respondent

2012: March 1
2014: January 14

JUDGMENT

- [1] **PRICE FINDLAY, J.:** By way of Fixed Date Claim Form the applicants have applied for the following relief:
1. A Declaration that pursuant to section 35(1) of the Labour Relations Act (Act No. 15 of 1999) the Labour Commissioner and not the Respondent is the proper authority to determine the bargaining unit upon an application for certification by a trade union.
 2. A Declaration that the Respondent unilaterally and without lawful authority, arbitrarily cancelled a poll scheduled by the Labour Commissioner in relation to employees at Independence Agencies Limited.
 3. An injunction restraining the Respondent from altering or in any way interfering with the bargaining unit determined by the Labour Commissioner as considered appropriate in the circumstances and acting pursuant to section 35 of the Labour Relations Act.
 4. A Declaration that the Respondent has no lawful authority pursuant to the Labour Relations Act or otherwise to dictate to the Applicant that it must apply to be certified as the Bargaining Agent for the workers at both CK's and Independence Agencies.
 5. An Order directing the Respondent to institute a poll in relation to the employees at Independence Agencies Limited pursuant to his statutory duty under section 36 (b) of the Labour Relations Act.
 6. Such further or other relief as to the court seems just.
 7. Costs.

Facts

- [2] Grenada Technical and Allied Workers Union made an application to the Honourable Karl Hood, Minister of Labour, on July 02, 2010 for Grenada Technical and Allied Workers Union to be certified as the Bargaining Agent for the non-managerial employees of Independence Agencies Ltd., located on the Maurice Bishop Highway in True Blue, St. George's. The application was signed by Mr. Bert Patterson, General Secretary of Grenada Technical and Allied Workers Union.
- [3] On July 5, 2010, Grenada Technical and Allied Workers Union received a letter from Independence Agencies Ltd. indicating that the application to be certified as the Bargaining Agent for the workers at the said Independence Agencies Ltd. was incomplete based on section 34 of the Labour Relations Act.
- [4] On July 5, 2010 Grenada Technical and Allied Workers Union responded by letter dated July 5, 2010 to Independence Agencies Ltd. Grenada Technical and Allied Workers Union pointed out that it had fulfilled its obligation by providing the Company with a copy of its application of July 01, 2010 to the Minister.
- [5] On July 9, 2010 Grenada Technical and Allied Workers Union received a copy of a letter addressed to Independence Agencies Ltd. and signed by the Labour Commissioner. The letter invited Independence Agencies Ltd. and, by extension Grenada Technical and Allied Workers Union, to a meeting on July 14, 2010 at 3:15 p.m. to resolve the issue of the application by Grenada Technical and Allied Workers Union "for certification as bargaining agent of employee (sic) at the Independence Agencies Limited".
- [6] On July 12, 2010 at about 3:00 p.m. a meeting was called by the Labour Commissioner at the Ministry of Labour. The meeting included the following parties: Cyrus Griffith and Adrian Thomas, Labour Commissioner and Deputy Labour Commissioner respectively; Kenrick Sylvester, Kelly Joseph and Hillary Baptiste, Manager, Accountant and Personnel Manager respectively, of

Independence Agencies Ltd.; and Godwin Thomas and Trevor Xavier, union officers of Grenada Technical and Allied Workers Union.

- [7] At the meeting the issues discussed were as follows:
- (a) Independence Agencies Ltd. requested that the Sales Manager, the Warehouse Manager, the Manager's Secretary, the Accountant Assistant, the Customers Supervisor, the Inventory Supervisor and the Warehouse Supervisor be exempted from the Bargaining Unit.
 - (b) In response Grenada Technical and Allied Workers Union stated that while it was willing to co-operate with the company's request, if the workers referred to in subparagraph (a) were to show up on the polling day to vote, they will have to be given the opportunity to exercise their right under the law, since those workers do not fit the description of manager.
 - (c) In relation to the workers at CK's Super Valu the following transpired:
 - i. The Company suggested that those workers were part of Independence Agencies Ltd. and should be included in the Bargaining Unit;
 - ii. Unlike subparagraph (a) above, the Company made no application for the staff at CK's Super Valu with a similar supervisory/managerial role to be exempted from the bargaining unit;
 - iii. When asked by the Labour Commissioner whether it had any interest in unionizing the workers at CK's Super Valu, Grenada Technical and Allied Workers Union response was no, indicating that its application was for the workers at Independence Agencies Ltd. on the Maurice Bishop Highway;
 - iv. When asked by Grenada Technical and Allied Workers Union whether CK's Super Valu was registered as Independence Agencies Ltd., the Company's Management could not give a definitive answer;

- v. The meeting concluded, and all the parties agreed that the poll will be held for the workers at Independence Agencies Ltd. on the Maurice Bishop Highway;
- vi. The Ministry of Labour suggested that the poll be set for Wednesday, July 14, 2010 at 10:00 a.m.;
- vii. After some minor objections by Grenada Technical and Allied Workers Union and the Company regarding the time of day suggested by the Labour Commissioner, all parties agreed that the poll should be conducted at 8:30 a.m. on July 14, 2010.

[8] On July 13, 2010 Grenada Technical and Allied Workers Union received a letter from the Labour Commissioner, Mr. Cyrus Griffith, with the caption "RE: POLL OF NON-MANAGERIAL EMPLOYEES AT INDEPENDENCE AGENCIES LTD." The letter confirmed that Wednesday 14th July, 2010 was the date fixed for the poll at Independence Agencies Ltd. The letter also requested that "a list of all non-managerial workers employed at the above named establishment, whom you claim to have as members in good standing", be made available to the Hon. Minister of Labour so as to "facilitate the conduct of the poll".

[9] On July 13, 2010 the Labour Commissioner also wrote to the Manger of Independence Agencies Ltd. advising him that pursuant to an application by Grenada Technical and Allied Workers Union for certification as bargaining agent for the workers at Independence Agencies Ltd., the Hon. Minister of Labour "intends to institute, and will conduct a poll of those workers" on 14th July, 2010 in accordance with the relevant sections of the Labour Relations Act. The letter further stated that the Labour Commissioner was directed by the Hon. Minister of Labour "to request from you a list of the non-managerial workers employed by the Independence Agencies Ltd. and that you will notify the workers of the time and place of the poll".

- [10] On July 13, 2010 the Manager of Independence Agencies Ltd. submitted a list of 65 non-managerial employees. The list was headed: "INDEPENDENCE AGENCIES LIMITED NON-MANAGERIAL EMPLOYEES". However, the list indicated that 39 of the 65 employees belong to Independence Agencies Ltd. and the remaining 26 belong to CK's Super Valu.
- [11] On the morning of July 14, 2010, when the respective parties turned up for the poll, Mr. Carol Bristol, QC, the Company's lawyer, took issue with the lack of participation of the workers at CK's Super Valu in the poll. Mr. Bristol, QC stated that those workers were part of Independence Agencies Ltd.; that they were in the Bargaining Unit, and that they will be part of the poll.
- [12] In response to Mr. Bristol's, Q.C statement, two points were made:
- (a) that this poll was being conducted by the Ministry of Labour and no one else; and
 - (b) that the Union and the Company had already met with the Ministry of Labour to determine the Bargaining Unit.
- [13] Elizabeth Cyrus, a Ministry of Labour official, reiterated part of what was stated, but that did not satisfy Mr. Bristol, Q.C, who repeated that the workers at CK's Super Valu were part of the Bargaining Unit.
- [14] Grenada Technical and Allied Workers Union produced a few concrete precedents regarding workplaces where the Bargaining Unit was determined in similar circumstances. These precedents were the following:
- (a) There are four (4) different unions acting as bargaining agents for all government employees, and Grenada Technical and Allied Workers Union is one of these unions;
 - (b) Kentucky Fried Chicken has three (3) different locations for its business operations, but Grenada Technical and Allied Workers Union represents workers in only one of these locations; and

(c) With respect to Gravel Concrete and Emulsion Production, and Caribbean Agro Industries Ltd., Grenada Technical and Allied Workers Union has two separate certificates of recognition for each workplace – one certificate for the management staff, and the other for the generalized staff.

[15] Despite those precedents, Mr. Bristol, QC, continued to insist that CK's Super Valu will be part of the Bargaining Unit, and what was done in the past was wrong and should be discontinued.

[16] At that point an audience was sought with the Ministry of Labour officials present. Mr. Bristol, Q.C, objected. Grenada Technical and Allied Workers Union's position remained the same; the poll applied for was for the workers at Independence Agencies Ltd.

[17] Mr. Bristol, Q.C, then advised the Company not to participate in the poll. Immediately thereafter, Mr. Bristol, Q.C, and the Company's management, together with one Ministry of Labour official, Mr. Michael Horsford, walked out of the Conference Room at Independence Agencies Ltd. The poll was thus aborted.

[18] The Honourable Minister Karl Hood then spoke with a representative of Grenada Technical and Allied Workers Union on the telephone. He said that he was cancelling the poll until he received legal advice from the Attorney General's office. The Minister was referred to the precedents outlined in paragraph 12 above, where polls of a similar nature were successfully completed. However, the Minister insisted that he would contact Grenada Technical and Allied Workers Union after he was advised by Ministry of Legal Affairs.

[19] On 14th July 2010, the said day, Grenada Technical and Allied Workers Union wrote to the Ministry of Labour pointing out the facts related to the aborted poll.

- [20] On July 15, 2010 Grenada Technical and Allied Workers Union communicated with the workers at Independence Agencies Ltd. through the distribution of a letter/pamphlet in which a factual account of the aborted poll was outlined to the workers. The letter/pamphlet was an actual copy of the letter sent to the Hon. Minister of Labour the previous day, July 14, 2010.
- [21] On July 15, 2010 Independence Agencies Ltd. through its General Manager distributed a letter to all its employees. That letter sought to refute the facts outlined in the Grenada Technical and Allied Workers Union pamphlet of July 15, 2010.
- [22] On July 20, 2010 the General Secretary of Grenada Technical and Allied Workers Union wrote to the Ministry of Labour regarding a "DEADLINE FOR POLL AT INDEPENDENCE AGENCIES LTD." The letter was sent six (6) days after the aborted poll. The said letter called on the Minister to follow the requirements of the law, which state that the poll must be carried out within 14 days of receipt of the application.
- [23] On July 20, 2010 the Minister of Labour responded to Grenada Technical and Allied Workers Union's letter dated July 14, 2010. The Minister's letter states, among other things, that in order to conduct the poll at Independence Agencies Ltd., the issue of the workers constituting the bargaining unit must be clarified.
- [24] On July 23, 2010 the Honourable Minister Karl Hood, wrote to Grenada Technical and Allied Workers Union stating essentially that an application for Grenada Technical and Allied Workers Union to be certified as bargaining agent must be made for the workers at both Independence Agencies Ltd. and CK's Super Valu.

Issues

- [25] Whether the decision by the Labour Commissioner under S.35 of the Labour Relations Act that a group of workers comprise an appropriate bargaining unit is

binding on the Minister of Labour when he seeks to exercise his powers under S.36 (1) of the said Act, and (2): If the decision of the Labour Commissioner is subject to the discretionary power of the Minister, did the Minister exercise that discretionary power reasonably and properly.

[26] Section 25 of the Labour Relations Act sets out the right and indeed the entitlement of every employee to belong to a trade union.

[27] Under the rubric of "Exclusive Bargaining Rights for Trade Unions" the Act sets out the procedure by which a trade union can apply for and be certified as the collective bargaining unit for employees.

[28] The particulars for such certification are set out in S.34 of the Act, and it reads as follows:

"1. The application referred to in section 33 shall be in writing, and shall include the following:

- (a) A copy of the trade union's constitution where the trade union is newly registered;
- (b) A description of the proposed bargaining unit;
- (c) Facts and documents upon which a trade union relies to demonstrate that the majority of employees in the bargaining unit wish to have the trade union certified as their exclusive bargaining agent;
- (d) Any other matter prescribed by regulations.

2. A copy of the application shall be served on the employer."

[29] The procedure for the Labour Commissioner to follow upon receipt of an application is set out in S.35:

"1. he Labour Commissioner shall on any application for certification under section 33 first determine where necessary, the bargaining unit

considered appropriate in the circumstances and in so doing the Commissioner shall have regard to:

- (a) The community of interest among the employees in the proposed bargaining unit;
- (b) The nature and scope of the duties exercised by the employees in the proposed bargaining unit; and
- (c) The views of the employer and the trade unions concerned as to the appropriate of the bargaining unit.

When making a determination under sub-section (1), the Commissioner may include additional employees in or exclude employees from the bargaining unit."

[30] It is for the Labour Commissioner to determine the bargaining unit appropriate in the circumstances, and he or she is clothed with the authority to include or exclude employees from the bargaining unit in his/her discretion.

[31] The Minister then has the authority to grant or refuse certification. Section 36 confers two (2) powers in the Minister.

1. Within fourteen days of the receipt of an application under section 33, the Minister shall either:
 - (a) Refuse to certify the trade union on the grounds that the bargaining unit identified by the trade union is not appropriate and inform all interested parties in writing of his decision.
 - (b) Institute a poll of the unit specified, by secret ballot in the presence of representatives of all interested parties in order to determine whether the majority of the employees in the bargaining unit wish to have the trade union making the application certified as their sole and exclusive bargaining agent;
2. After due determination as referred to in subsection 1(b) the Minister shall within seven days after the poll has been conducted either:

- (a) Refuse to certify the trade union on the grounds that it has not satisfied the requirement that a majority of employees in the bargaining unit wish to have the trade union certified as their sole and exclusive bargaining agent and inform all interested parties of his decision; or
 - (b) Shall issue his certificate to the trade union gaining the requisite majority as the bargaining agent for that unit and shall inform all interested parties that he has done so.
3. A trade union whose application under this part has been unsuccessful shall not be entitled to make further application to the same employer in respect of the same or substantially the same bargaining unit until the expiration of ninety days.

[32] These powers are in the opinion of the Court to be exercised in the alternative. Either the Minister refuses to certify on the ground that the bargaining unit is not appropriate or he institutes a poll of the specified unit.

[33] Further, after the poll, in accordance with the legislation, the Minister can refuse to certify on the ground that the trade union has not received the votes of a majority of the employees in the bargaining unit or he shall issue the certificate stating that the union has gained the requisite number of votes to be the bargaining unit.

[34] There seems to be no power granted to the Minister or anyone else to stop the poll once the machinery for the conduct of a poll has been put in place.

[35] In this case the Minister made a choice; he chose to have the poll. It seems that in coming to that decision, he accepted the Labour Commissioner's determination as to what was an acceptable bargaining unit.

[36] It is not for the principals of Independence Agencies Ltd. to determine what is the appropriate bargaining unit. It is not for the lawyer acting for Independence

Agencies Ltd. to determine the appropriate bargaining unit. This decision lies with the Labour Commissioner, and the Minister can only refuse to certify the trade union on the ground that the said bargaining unit is not appropriate.

[37] But once the Minister institutes a poll, as was done here, it must naturally follow that he was of the view that the bargaining unit as identified by the Labour Commissioner was appropriate.

[38] Whether a trade union has been certified or not is of no consequence in this interpretation of these sections of the Labour Relations Act.

[39] The Minister in these circumstances seemed to have had second thoughts on the appropriateness of the bargaining unit after having acted in accordance with S. 36 (1) (b).

[40] In this Court's view, the Minister could not do so, and agrees with Counsel for the Applicant that the Minister took a power onto himself that had not been conferred upon him by the statute.

[41] Having instituted the poll, the Minister had made a choice under S.36 and he could no longer revisit whether the bargaining unit was appropriate or not. That opportunity had been lost once he took the steps to initiate the poll.

[42] For the Minister to have initiated a poll could only mean that he was of the view that the bargaining unit was appropriate, and in the exercise of his discretion he chose to act in accordance with S.36 (1) (b) as opposed to S.36 (1) (a).

[43] Further, the reasons for and the catalyst for the abandonment of the poll were forces and persons unrelated to the process and to the exercise of the Minister's discretion.

[44] Discussions and meetings were held with the relevant principals prior to the process being set in train. It was not for the employer or their lawyer to interfere in the process and put a stop to an authorized poll. It is for the trade union to determine which workers they wish to represent and for those workers to vote in a secret poll as to whether they wish the trade union to represent them.

[45] In the circumstances, I find that the decision to abort the poll was wrong and that the Minister failed to act in accordance with the provisions of the Labour Relations Act when he decided to abort the poll.

[46] The Minister had a clear choice under the legislation and once he chose to institute the poll, the choice under S. 36 (1) (a) was lost to him.

[47] I therefore order as follows:

1. A Declaration that pursuant to section 35(1) of the Labour Relations Act (Act No. 15 of 1999) the Labour Commissioner and not the Respondent is the proper authority to determine the bargaining unit upon an Application for certification by a trade union.
2. A Declaration that the Respondent unilaterally and without lawful authority, arbitrarily cancelled a poll scheduled by the Labour Commissioner in relation to employees at Independence Agencies Limited.
3. An injunction restraining the Respondent from altering or in any way interfering with the bargaining unit determined by the Labour Commissioner as considered appropriate in the circumstances and acting pursuant to section 35 of the Labour Relations Act.
4. A Declaration that the Respondent has no lawful authority pursuant to the Labour Relations Act or otherwise to dictate to the Applicant that it must apply to be certified as the Bargaining Agent for the workers at both CK's and Independence Agencies.

5. An Order directing the Respondent to institute a poll in relation to the employees at Independence Agencies Limited pursuant to his statutory duty under section 36 (b) of the Labour Relations Act.

[48] Costs to Applicant in the sum of \$5,000.000.

Margaret A. Price Findlay
High Court Judge