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Right for employees working for an employer outside the limits of the City of Montreal, to absent themselves for two hours, without loss of pay, in order to vote as electors on the City of Montreal elections — Applications of article 328 of the Charter of the City of Montreal

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Résumé de l'article

The Charter of the City of Montreal does not require that, in order to be an elector, a person should either reside or work within the City limits. Article 328 not only gives to any elector the right to quit his work; it also imposes upon the employer the obligation not to reduce an elector's salary. Such an obligation is decreed as a consequence of the employee's right freely to quit his work, and according to the charter, this right does not vary according to the elector's place of work.

United Steelworkers of America Local 5063 and Dominion Steel and Coal Corporation Ltd (Canadian Bridge — Truscon Steel Works); Montreal, March 14th 1961; Jean Beetz, Arbitrator.

« Sur le tout, il y a lieu au bref de prohibition quand les arbitres excèdent leur juridiction ou n'en ont aucune, quand le différend qui leur est soumis tombe sous le coup de la Loi des différends entre les services publics et leurs salariés, que ce soit un conflit d'intérêt ou un conflit de droit, selon le vocabulaire employé en France, et aussi quand l'arbitrage a lieu en vertu d'une clause de convention collective par laquelle les parties ont convenu de soumettre à un conseil d'arbitrage tout litige se rapportant à la convention qu'elles signent, s'engageant à accepter la décision des arbitres comme finale, et les liant de la même manière qu'une sentence arbitrale rendue suivant les dispositions du chapitre 73 du Code de Procédure Civile. »

Si donc le présent tribunal d'arbitrage décidait le cas de J.-C. Bouchard, il excéderait sa juridiction; il agirait même sans juridiction et il s'exposerait au bref de prohibition car, la Commission de Relations Ouvrières ayant été saisie de ce cas et ayant rendu sa décision, elle seule maintenant peut reviser sa propre décision en vertu de l'article 41 de la Loi des Relations Ouvrières.

CONCLUSION

Pour toutes ces raisons, l'entente du 19 décembre 1960, en ce qui concerne le cas de J.-C. Bouchard, est donc nulle de nullité radicale et absolue. Elle n'existe donc pas. Il ne reste donc à la partie syndicale que deux moyens de régler le cas de J.-C. Bouchard: ou de recourir à l'article 41 de la Loi des Relations Ouvrières en demandant à la Commission de Relations Ouvrières de reviser sa décision, si toutefois la partie syndicale peut montrer cause, ou obtenir de la partie patronale un désistement d'action qui équivaldrait à l'abandon de son droit et au réengagement de J.-C. Bouchard, mais, comme ce désistement n'a pas eu lieu, le présent tribunal d'arbitrage se voit dans l'obligation de déclarer qu'il n'a aucune juridiction pour décider le cas de J.-C. Bouchard et qu'il n'a pas le droit de reviser la décision de la Commission de Relations Ouvrières. Il ne reste donc plus à la partie syndicale que le recours prévu à l'article 41 de la Loi des Relations Ouvrières.

Right for employees working for an employer outside the limits of the City of Montreal, to absent themselves for two hours, without loss of pay, in order to vote as electors on the City of Montreal elections — Applications of article 328 of the Charter of the City of Montreal

The Charter of the City of Montreal does not require that, in order to be an elector, a person should either reside or work within the City limits. Article 328 not only gives to any elector the right to quit his work; it also imposes upon the employer the obligation not to reduce an elector's salary. Such an obligation is decreed as a consequence of the employee's right freely to quit his work, and according to the charter, this right does not vary according to the elector's place of work. ¹

(1) United Steelworkers of America Local 5063 and Dominion Steel and Coal Corporation Ltd (Canadian Bridge — Truscon Steel Works); Montreal, March 14th 1961; Jean Beetz, Arbitrator.

THE FACTS

In their joint statement, dated January 19th, 1961, the parties have agreed upon the facts as follows:

At approximately 8 o'clock on the morning of the Montreal Civic Election, that is Monday the 24th day of October 1960, Union representatives of the LaSalle Plant, Local Union, enquired of the Company if the employees of the LaSalle plant who are residing in Montreal would be allowed time off between 12 noon and 2.00 p.m. without loss of wages to vote in the Montreal Civic Elections being held that day. After checking out its position, the Company denied the request. Later on in the morning, certain employees made the same request and it too was denied. Seventeen employees left the Company's premises between 12 noon and 1.00 p.m. to vote all of whom reported back late for work and were suspended for the balance of the shift and the first half of their next shift. The regular shift hours for those employees involved were 8.00 a.m. to 4.30 p.m.

THE LAW

The sole problem to be solved is one of law, namely whether Article 328 of the Charter of the City of Montreal applies outside the territorial limits of the City of Montreal and particularly to the operations of the Company at Ville LaSalle and to the employees of the Company who are electors for the purposes of the City of Montreal elections.

Article 328 of the Charter of the City of Montreal reads as follows:

« On the day of the voting, any elector may quit his work, whatever it may be, from noon to two o'clock for the purpose of registering his vote, and his employer shall not reduce his salary directly or indirectly on account of his absence. »¹

I have failed to find a single authority, either jurisprudential or doctrinal, which, upon this somewhat circumscribed subject, would appear to be very helpful, let alone conclusive. There are numerous reported cases upon the territorial limitations to the powers of city councils, the general principle being to the effect that in the absence of express statutory authority, « municipal jurisdiction is contrainous with local limits ». But such authorities seem hardly pertinent since we have to deal, not with a by-law, but with the City Charter itself, the *Act of a Legislature* the competence of which extends over the whole provincial territory.

It could be argued, I suppose, on behalf of the Company that, since Montreal municipal problems are local problems, and since the Legislature has chosen to deal with them in a local and private Act, then the Legislature must have intended that its Act should have no effect outside the territory of the City of Montreal. The Charter could possibly be brought under section 42 of the Interpretation Act, which decrees that « no statute of a local and private nature shall affect the rights of third parties, unless specially mentioned therein », as well as under Article 9 of the Civil Code which stipulates that « The rights of third parties, who are not specially mentioned in any such act, are likewise exempt from the effect thereof,

(1) 8-9 Eliz. II (1959-1960) c. 102, a. 328.

unless the act is public and general ». The Company could presumably plead that it is a third party whose rights as an employer cannot be affected by an Act which is not a general Act.

...even admitting, for the sake of argument, that the Charter is a more local or private Act, section 42 of the Interpretation Act, article 9 of the Civil Code and the two above mentioned cases expressly declare that the rights of third parties can be affected by private Acts provided that such Acts specially mention them, and article 328 specially mentions « employers ». To state that employers doing business outside the City limits are not included in that word would be the equivalent of bagging the question.

The general principle according to which the dispositions of the City Charter should produce no effect outside the territory of the City of Montreal does not appear to be established on absolutely firm ground, since there are several sections of the Charter — most of them dealing with elections — which were intended to receive extramunicipal effect, for instance sections 376, 389, 391 and 394, prohibiting treating; section 395, corrupt practices; section 387, causing work to be done with intent of influencing vote; section 396, undue influences; section 397, intimidation; section 399 e), aiding and abetting personation; section 402, transportation of electors; section 407, nullity of certain contracts, etc. If such sections should be given extramunicipal effect — which I believe they should — it is not because they expressly say so — which they do not — but because such effect is useful or necessary to the full efficiency of important rules of law promoting electoral honesty. Could it not be said that a rule inciting electors to exercise their suffrage should be constructed in a similar fashion? Could it not be argued that an excellent mean to prevent electoral fraud and to promote public order would be to urge as many electors as possible to avail themselves of their right to vote?

... In the Province of Quebec, municipal charters are usually proceeded with, by the Legislature, as private bills. In my opinion, however, such a practice, which is a matter of parliamentary tradition, and which is dictated sometimes by procedural convenience, and perhaps by political expediency, changes nothing to the substance of an Act. Should it be found that an Act which gives to a municipal council the broadest legislative power, namely, the power « to enact by-laws to ensure the peace, order and good government »² of a city of more than a million inhabitants, is not a measure of public policy, one fails to see what statute could be of interest to the public. And the election of the members of such a council surely is a matter of equal importance in a democratic system.

... Article 328 of the City Charter, as section 238 of the Cities and Towns Act, and the freedom to vote at municipal elections, in general, are matters of public policy to such an extent that, in the immediately preceding articles, article 327 of the Charter, and section 237 of the Cities and Towns Act, the legislator has dispensed the elector, on election day, from a most important public duty, by permitting him to ignore a summons to appear as a witness before any judge or tribunal in the Province. Surely, if in the Legislator's opinion, the administration of justice in the Province can do without many witnesses during a whole day, the rule according to which an elector's employer must do without the latter's services

(2) Section 516 of the Charter.

during two hours should not be interpreted restrictively, particularly when the letter of the rule commands no such interpretation.

It is quite true that the process may prove costly for the employer, but either the employer or the employee most lose those two hours and everywhere, the legislator has chosen to inflict the loss upon the employer, in order, apparently, to promote as heavy a voting as possible. The provincial election act³ and the federal election act⁴ both contain dispositions to the same effect. Article 328 of the City Charter thus embodies what seems to have become a general principle of the Common law of elections.

... Finally, I believe that it is possible to confirm my general interpretation of article 328 of the Charter, by an analysis of its wording. It decrees that, «on the day of the voting, ANY ELECTOR may quit his work». The term «ELECTOR» is defined in article 2, paragraph j, as «any natural or artificial person entitled under the charter to vote at a city election...» It is agreed in the statement of facts, that the seventeen employees who left the Company's premises on the 24th day of October 1960, are ELECTORS according to the Charter, since it is said that «they left to vote».

The Charter does not require that, in order to be an ELECTOR, a person should either reside or work within the City limits. It follows that according to the very words of article 328, each of those seventeen employees, being an ELECTOR according to the Charter, could «quit his work, whatever it may be, from noon to two o'clock, for the purpose of registering his vote».

Now the article not only gives to any elector the right to quit his work; it also imposes upon the employer the obligation not to reduce an ELECTOR'S salary. Such an obligation is decreed as a consequence of the employee's right freely to quit his work, and according to the charter, this right does not vary according to the ELECTOR'S place of work. The word «his», in the expression «his employer clearly refers to the elector's employer. The company is the «employer» of seventeen «electors» according to the Charter. It follows that the Company could not legally reduce their salary directly or indirectly on account of their absence.

Perhaps I should add, before completing this opinion, that I have taken cognizance of the fact that the Company's plant in the City of LaSalle is within a short distance of the City of Montreal, and of the fact that public transportation is provided between the two cities.

The seventeen employees must be presumed to have left the Company's premises in good faith and in order really to cast their vote in the Montreal election.

The Company's attitude was based upon a practice followed by neighbouring employers, but I do not believe that this practice was legally justified, and practice, however common, is of us avail against the law.

(3) (1945) 9 Geo. VI, Chapter 15, section 262 (Quebec).

(4) (1960) 8-9 Eliz. II, Chapter 39, section 47 (Canada).