Two Big Wins For Unions At The SCC

Earlier this year, the Supreme Court of Canada delivered a pair of big wins to Canadian unions. Both judgments relate to public sector unions, but may have important implications for labour law more generally. In both cases, the Court has undermined its own precedent.

Mounted Police Association of Ontario v. Canada (Attorney General)

The first case is *Mounted Police Association of Ontario v. Canada (Attorney General)*. In this case, the Court (per McLachlin C.J. and Le Bel J. for the six-judge majority; Rothstein J. dissenting) held that a legislative ban preventing members of the Royal Canadian Mounted Police from unionizing was unconstitutional because it infringed the right to freedom of association under *Charter* s. 2(d).

The majority considered that the legislated human relations scheme substantially interfered with the right to associate because the scheme was not chosen or controlled by RCMP members, was not independent from management, and did not permit meaningful collective bargaining. The majority expressly overturned the Court's previous decision in *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989, which held that the exclusion of RCMP members from the application of federal public sector labour relations legislation did not violate *Charter* s. 2(d). In so doing, they cited the Court's recent shift to a purposive and generous approach to labour relations.

A more fulsome summary of the judgment can be found here, on the British Columbia Employment Advisor blog.

Saskatchewan Federation of Labour v. Saskatchewan

The second case is *Saskatchewan Federation of Labour v. Saskatchewan*. In this case, the Court (per Abella J. for the five-judge majority; Rostein and Wagner JJ. dissenting in part) considered provincial legislation limiting the ability of "essential services" public sector employees to strike. Both the majority and dissent agreed that the legislation was unconstitutional because it granted unilateral authority to government to determine which employees were providing "essential services" and because the legislation provided no meaningful alternative review mechanism, such as arbitration.

The majority also went further and held that the right to strike is protected by *Charter* s. 2(d). In the majority's view, this was a logical extension of precedent

because the right to strike is essential to a meaningful process of collective bargaining. Rothstein and Wagner JJ. strongly disagreed. In their view, the Court's own precedent does not support a right to strike under *Charter* s. 2(d).

A more detailed discussion of the background to this decision can be found here, on the British Columbia Employer Advisor blog. A more detailed summary of the Supreme Court of Canada's judgment is available here, on the Ontario Employer Advisor blog.

Potential Implications

There are strong dissenting judgments in both cases. In the *Saskatchewan Federation of Labour* case, Rothstein and Wagner JJ. expressed concerns about uncertainty, because constitutionalizing a right to strike implies that all statutory limits on the right to strike are unconstitutional. Moreover, they noted that the new constitutional right is one that can only be exercised by unionized workers. In the *Mounted Police* case, Rothstein J. also raised concerns about the continual expansion of the constitutional right to freedom of association and claimed the majority's decision enshrined an adversarial model of labour relations as a *Charter* right.

These cases have two important implications. First, we can expect the issue of statutory limits on strikes to be litigated further in light of the *Saskatchewan Federation of Labour* case. Second, these cases seem to indicate that the Court is perhaps more willing than ever to reverse its own precedents, at least in relation to the expansion of certain constitutional rights.

Last Updated: March 24 2015

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