Ashton Chase Assoc.

2006 No. 688 – W DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

GUYANA LOCAL GOVERNMENT OFFICERS' ASSOCIATION.

(Plaintiff)

-and-

1. THE MAYOR AND COUNCILLORS OF THE CITY OF GEORGETOWN BY AND THROUGH THE TOWN CLERK OF GEORGETOWN.
2. GUYANA LABOUR UNION.

(Defendants jointly & severally)

BEFORE MR. JUSTICE IAN CHANG – CHIEF JUSTICE (ag.)

Mr. Nigel Hughes for the Plaintiff.

Mr. Robert Ramcharran for the 1st named Defendant.

Mr. Ashton Chase, S.C for the 2nd named Defendant.

HEARD ON:
2010
JAN. 21

RULING

The Plaintiff and the 2nd named defendant are trade unions registered under the Trade Union Act, Chapter 98:03. The 1st named defendant is a body corporate established under the Municipal and District Councils Act, Chapter 28:01. The said unions represent different categories of workers

employed by the 1st named defendant. The 1st named defendant deducts union dues from the salaries of unionized workers and pays them to the respective unions. The categories of workers represented by the plaintiff union were agreed upon in a Memorandum of Agreement made on the 1st June 1977 between the plaintiff union and the 1st named defendant.

The 2nd named defendant made a complaint to the 1st named defendant that those employees represented by it were being treated differently from those represented by the plaintiff union in respect of the granting of benefits and that the 1st named defendant was re-designating employees into fixed categories thereby causing them to fall under the umbrella of representation of the plaintiff union. In order to have their disputes settled, the 1st and 2nd named defendants agreed to refer their differences to arbitration. The Chief Labour Officer appointed former Justice of Appeal Prem Persaud as arbitrator.

The said arbitrator conducted hearings in which the 1st and 2nd named defendants made written submissions. It appears that the plaintiff union was unaware of the arbitration proceedings and took no part in them. Nor were they invited or requested to make representations.

The arbitrator made findings and recommendations which the plaintiff union claims impacted adversely on their membership and the union dues payable to it. This gave rise to the present proceedings in which the plaintiff union claimed the following reliefs:

> "(a) a declaration that the awards dated the 20th February 2007, 27th February 2006 and 15th September 2006

made by the arbitrator in the dispute between the Nos.1 and 2 defendants are invalid, unenforceable and of no effect

(b) A declaration that the arbitrator exceeded his jurisdiction and acted contrary to law when he made awards which purported to affect over 250 members of plaintiff union without hearing the plaintiff or any of its representatives.

(c) An order that the awards dated 20th February 2006, 27th February 2006 and 15th September 2006 made by the arbitrator in the dispute between the Nos.1 and 2 defendants are invalid, void and of no effect.

(d) A declaration that the employees of the No.1 defendant have a constitutional right to belong to any trade union of their own choice for the protection of their interests.

(e) A declaration that the awards dated 20th February 2006, 27th February 2006 and 15th September 2006 are contrary to Article 147 of the Constitution.

(f) An injunction restraining the defendants, their servants and/or agents from carrying out, complying with or implementing any of the awards dated 20th February 2006, 27th February 2006 and 15th September 2006 made by arbitrator Prem Persaud in the dispute between the Nos. 1 and 2 defendants.

(g) Such further or other orders as the Court deems fit.

(h) Costs."

Senior Counsel for the 2nd named defendant submitted ***in limine*** that the proceedings should be struck out since they were instituted without the authority of the "plaintiff" union. Senior Counsel drew the Court's attention to the Authority to Counsel which was filed. That document reads:

> "I, ANDREW GARNETT, in my capacity as President of the Guyana Local Government Association the abovenamed plaintiff do hereby authorized MR. OSWELL LEGALL, Attorney-at-Law, to act as **my** Attorney-at-Law in this action and as such to do all acts and things necessary therein on **my** behalf."

Assuming that Andrew Garnett as "President of the plaintiff union had the authority to authorize Attorney-at-Law Oswell Legall to act on behalf of the **union**, it is clear and beyond dispute that he authorized Mr. Legall to act as Attorney-at-Law for **him** in his capacity as President of the union and not for the union.

Order 3 Rule 8 of the Rules of the High Court prescribes:

> "The **plaintiff's solicitor**, unless authorized by a general power and litem duly registered or recorded in the Deeds Registry, **shall when presenting a writ of Summons to the Registrar, produce an authority in writing, signed by the plaintiff or his attorney, appointing the solicitor to act for him in the action:** provided that where the Registrar is satisfied that it is not practicable for the solicitor to produce the written authority **when presenting the writ of summons** the Registrar may accept the writ subject to the solicitor

giving a written undertaking to file the authority within such time as the Registrar may think fit. Such authorization or undertaking shall be indorsed upon the original writ or contained in a separate document filed with the writ."

In the instant case, the Authority to Attorney-at-Law endorsed on the writ positively disclosed that the Mr. Legall was authorized to file the writ on behalf of Andrew Garnett in his capacity as President of the union and not on behalf of the union. Since Mr. Legall, when presenting the writ to the Registrar, did not produce a written authority which enabled him to act for the plaintiff union in the action, the Registrar could not have accepted and issued the writ unless Mr. Legall as counsel stated on the writ had given to the Registrar a written undertaking to file that document within such time as the Registrar might have thought fit. Since there was no such written undertaking given to her by Mr. Legall, the Registrar had no authority to accept and issue the writ. Nothing done by the defendants could have ***ex post facto*** conferred upon the Registrar an authority which she did not have. As such, the acceptance and issue of the writ was not an irregularity but rather a nullity. There could have been no proceedings at all if the writ could not have been accepted and issued by the Registrar. Such a state of legal affairs does not attract Order 54 Rule 1.

This Court holds that these proceedings were never legally ***in esse*** and must be struck out.

In any event, it does appear that these proceedings were misconceived. Collective agreements only became legally enforceable under section 28A of the Labour (Amendment) Act 1984 and then only if

the collective agreement does not state otherwise. Therefore, the collective agreement of the 1st June 1977 was and is not legally enforceable. This court has no power to give retrospective enforceability to that collective agreement. Neither could the findings made by arbitrator Prem Persaud in the arbitration proceedings conducted to resolve the industrial dispute between the 1st named and 2nd named defendants give legal enforceability to that 1977 collective agreement. The arbitrator could not by his findings or non-findings take away from the plaintiff union a legal right which it never had.

Moreover, the constitutional right of a worker to belong to a trade union of his own choice is a right which belongs to the worker and not to the trade union. Findings or non-findings of the arbitrator could not detract from that fundamental right or take away from the plaintiff union a legal right which it never had under the 1977 collective agreement.

It does appear that these proceedings have nothing to do with the infringement or non-infringement of a legal right under civil law and are misconceived. For this reason also, it must be struck out.

There will be costs in sum of $30,000 to the second named defendant.

Ian N. CJ

Mr. Ian N. Chang, S.C
Chief Justice (ag.)

Dated this 19th day of March, 2010