Cited as:

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 873

Delroy P. Jarrett, Applicant v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 873, Responding Party

[1999] O.L.R.D. No. 1338

File No. 3176-98-U

Ontario Labour Relations Board

BEFORE: David A. McKee, Vice-Chair

May 25, 1999

DECISION OF THE BOARD

1 The correct name of the responding party: "International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 873", and the title of this matter is amended accordingly.

2 This is an application under section 96 of the LABOUR RELATIONS ACT, 1995, S.O. 1995, c.1 (the "Act") in which the applicant alleges that the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 873 ("IATSE") has violated sections 74, 75 and 76 of the Act. He states that he is a member of IATSE and his union seniority was adversely affected by IATSE's conduct. IATSE has filed a response and submits as a preliminary matter that the application does not disclose a PRIMA FACIE case.

3 Rule 24 of the Board's Rules of Procedure provides as follows:

> 24. Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing. In its decision, the Board will set out its reasons. The applicant may within twelve (12) days after being sent that decision request that the Board review its decision.

4 Accordingly, the Board is directed to look at the facts pleaded by the applicant and for purposes only of determining the preliminary submissions of IATSE, assume they are true. The application is divided into: "Background Facts" and "Present Facts".

5 In regard to the "Background Facts", the applicant has not pleaded what significance he wishes the Board to attach to them. The allegations do not appear to relate to the relief claimed, i.e. "Reinstatement of Union Seniority", but might relate to an unparticularized claim for lost wages. If they are, as they are styled, background facts, i.e. similar facts designed to show a pattern of bad faith or arbitrary behaviour by IATSE, they are too remote in time (1988 to August 1997) and of too tenuous a connection to be relevant for this purpose. If the Background Facts are intended to set out an independent violation or series of violations of section 74, 75 or 76, they are simply too late to form the basis of a complaint filed December 14, 1998. As the Board has said in an often-cited passage in the CITY OF MISSISSAUGA, [1982] OLRB Rep. Mar. 420:

> 20. It is by now almost a truism that time is of the essence in labour relations matters. It is universally recognized that the speedy resolution of outstanding disputes is of real importance in maintaining an amicable labour-management relationship. In this context, it is difficult to accept that the Legislature ever envisaged that an unfair labour practice, once crystallized, could exist indefinitely in a state of suspended animation and be revived to become a basis for litigation years later. A collective bargaining relationship is an ongoing one, and all of the parties to it - including the employees - are entitled to expect that claims which are not asserted within a reasonable time, or involve matters which have, to all outward appearances, been satisfactorily settled, will not reemerge later. That expectation is a reasonable one from both a common sense and industrial relations perspective. It is precisely this concern which prompts parties to negotiate time limits for the filing of grievances (as the union and the employer in this case have done) and arbitrators to construct a principle analogous to the doctrine of laches to prevent prosecution of untimely claims. (See Re C.G.E. 3 L.A.C. 980 (LASKIN); and RE OIL CHEMICAL AND ATOMIC WORKERS, LOCAL 9-672 AND DOW CHEMICAL OF CANADA LIMITED, (1966) 18 L.A.C. 50, (Arthurs)).
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> 21. In recognition of the fact that it is dealing with statutory rights, the Board has not, heretofore, adopted any rigid practice with respect to the matter of

delay - holding, in most cases, that it will simply take this matter into account in determining the remedy if a statutory violation is established. However, whatever the merits of this approach, the Board must also keep in mind the potentially corrosive effect which litigation can have upon the parties' current collective bargaining relationship - quite apart from the outcome. Adversarial relationships are pervasive enough in our industrial relations system without the resurrection of ghosts from the past. In the Board's view, the orderly conduct of an ongoing collective bargaining relationship and the necessity of according a respondent a fair hearing both require that unions, employers and employees recognize a principle of repose with respect to claims that have not been asserted in a timely fashion. If such claims are not launched within a reasonable time, the Board may exercise its discretion pursuant to section 89 and decline to entertain them.

22. A perusal of the Board cases reveals that there has not been a mechanical response to the problems arising from delay. In each case, the Board has considered such factors as: The length of the delay and the reasons for it; when the complainant first became aware of the alleged statutory violation; the nature of the remedy claimed and whether it involves retrospective financial liability or could impact upon the pattern of relationships which has developed since the alleged contravention; and whether the claim is of such nature that fading recollection, the unavailability of witnesses, the deterioration of evidence, or the disposal of records, would hamper a fair hearing of the issues in dispute. Moreover, the Board has recognized that some latitude must be given to parties who are unaware of their statutory rights or, who, through inexperience take some time to properly focus their concerns and file a complaint. But there must be some limit, and in my view unless the circumstances are exceptional or there are overriding public policy considerations, that limit should be measured in months rather than years.

6 Accordingly, the Board is not prepared to consider the "Background Facts" in determining whether the application discloses a violation of sections 74, 75 or 76.

7 With respect to the "Present Facts", the applicant complains that as a result of a late payment of his dues his "seniority IN THE UNION" was altered from 1985 to May of 1998. He believes the circumstances in which this was done demonstrated IATSE was unfair, arbitrary and discriminatory. The issue before the Board however is whether these facts make out a violation of the sections pleaded.

8 Section 76 states:

> 76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

9 There is simply no fact pleaded which could amount to intimidation or coercion in any sense, and certainly nothing to suggest that the union did anything to cause him to become or refrain from becoming a member of a trade union or to refrain from exercising any other rights under this Act. The allegation of a violation of section 76 is dismissed as no breach of the section has occurred on the basis of the facts pleaded.

10 Section 74 states:

> 74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

11 The applicant does not plead that any employment he held at the time his seniority was altered was in any way affected by the union's action. Indeed, he does not even plead that he was employed. Accordingly, the facts could not constitute a breach of section 74, which regulates the conduct of a union in the representation of EMPLOYEES in a BARGAINING UNIT of employees of a particular employer. The allegation of a violation of section 74 is dismissed as no breach of the section has occurred on the basis of the facts pleaded.

12 Section 75 states:

> 75. Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

13 While the applicant pleads that "the Union's actions in removing my seniority adversely affects [sic] my rights to the assignment of certain work", he does not plead any facts to support this conclusion. He does not plead that IATSE is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, although that inference might be drawn from the facts as pleaded. There is however no fact alleged with respect to any connection between the referral to employment by IATSE (if this occurs) and his seniority standing in IATSE.

14 It is not enough simply to plead a conclusion, i.e. that the change in the applicant's union seniority status affects his right to be assigned to certain work. It is necessary to plead specific facts

about how seniority status affects work assignments, the dates on which or the period during which this adverse effect occurred, and some idea of what work assignments the applicant claims he was deprived of. This is particularly so when the Board has scheduled a consultation. In a consultation the responding party, in this case IATSE, is expected to have placed before the Board, before the consultation occurs, all the facts and evidence on which it intends to rely. A consultation is not the place to find out for the first time what the applicant's case is about. In this application, the union cannot possibly respond to the allegation of adverse impact on work opportunities on the basis of the application as it stands. Indeed, there are no facts which would constitute a breach of section 75.

15 Rule 16 requires that a party provide a detailed statement of all material facts relied upon. The applicant has not done so. The Board therefore directs the applicant to deliver to the Board and the union within 14 working days of the date of this decision a statement of all material facts on which he relies as the basis for his assertion that his change in union seniority status adversely affects his rights to the assignment of certain work. If he fails to do so, or fails to plead facts which would constitute a violation of section 75, the application will be dismissed and the consultation presently set for August 20, 1999 will be cancelled.

16 I am seized of this matter.

cp/d/das/qlalo