

The Rand Formula in the Asbestos Decision

Volume 5, Number 4, January 1950

URI: <https://id.erudit.org/iderudit/1023320ar>

DOI: <https://doi.org/10.7202/1023320ar>

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Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)

1703-8138 (digital)

[Explore this journal](#)

Cite this article

(1950). The Rand Formula in the Asbestos Decision. *Relations industrielles / Industrial Relations*, 5(4), 37–40. <https://doi.org/10.7202/1023320ar>

The collective agreement leads to the organization of industry. It bestows upon it a law. It makes representative organizations of employees' syndicates and employers' associations. It facilitates the creation of industrial institutions.

Since the passing of the Act all collective regulation possesses, ipso facto, a natural force of expansion. The collective agreement is presented at one and the same time as a means of economic organization and as an instrument of social peace. It was with the aim of guaranteeing a greater effectiveness and uniformity to the efforts of private groupings that the juridical extension was advanced. It was particularly this extension which was explained in the preamble of the law which has disappeared in later editions. Here is the text of this preamble in which is expressed the intention of the legislators. «Whereas social justice prescribes the regulating of labour when the economic situation entails for the wage-earner conditions contrary to equity;

Whereas, to tolerate the forced acceptance of an insufficient remuneration is to neglect to take into account the dignity of labour and the needs of the wage-earner and his family;

Whereas, it is timely to adopt, to extend and to make obligatory the working conditions recorded in the collective agreements, as much to forestall unfair competition for the signatories as to establish just wages and satisfy equity;

Because of these reasons... »

We state then that the stabilizing and equalizing of conditions of labour are herein concerned.

Monsieur Jean-Pierre Després has expressed opinions on this subject with which we entirely agree, «The juridical extension is for the purpose of protecting employers interested in their social responsibilities. It is only just to protect them against the small minority liable to furnish unfair competition... »¹

It is an excellent method of gradually leading towards syndicalism those who are not signatories. Returning to the author quoted above, we admit with him that, «The juridical extension of the collective agreement represents the most efficient formula for organizing the labour market for the advantage as much of the employer as of the trade-unions. It creates an equilibrium between these two forces, which inevitably encounter each other on the labour market, and, above all, it has the merit of being essentially democratic since it recognizes both the rights and the obligations of each ».²

(1) J.-P. DESPRÉS, *Le mouvement ouvrier canadien*, p. 159, Fides, Montreal, 1947.
(2) *Idem*, p. 161.

No legislation could bring greater protection to wage-earners. The parity committee, provided for by this law, does not limit itself to the material interests of its members but is also occupied with the intellectual interests of the employers and employees of an industry. With the aid of the Ministry of Labour, it was the parity committees which instituted the Apprenticeship Commissions. Clause number nine of this law bears on the matter of apprenticeship and promotes it.

It was this decree which set in motion the juridical extension. This links equally and without discrimination all employers in the same territorial zone whether they direct a large or a small enterprise, and, in so doing, causes justice to prevail.

We acknowledge the right of the State to control agreements freely entered into by employers' and workers' groups. But this right must be exercised in a way to maintain for the agreements that efficacy foreseen by the contracting parties at the moment of signing. To limit, for example, the application of an agreement or a decree to a group of employers of the same business or industry in a determined region can not but diminish sensibly, if not even cancel, the effects anticipated by the signatories.

The juridical extension of a collective agreement can not but be the ideal conclusion of the judicious deliberations of the most representatives groupings concerned. But again, it is necessary that these really be their decisions in so far as they are the expression of a general accord.

A decree should unite all the employers if, in justice, they would avoid the unfair competition which would limit its application to some only of these employers. The agreements or decrees must apply uniformly to a trade, to a business and to an industry. And all those who practise the same trade, carry on the same kind of business or enterprise should be subject to the same employment regulations for their employees. To resume, the law must apply equally and in the same manner to all regardless of the number of workers in their employ.

To go against these principles would be nothing more or less than to work at cancelling the effects of an agreement or decree and to deny the reasons for which the Collective Agreement Act was enacted — reasons which are mentioned in the preamble of the said law.

In conclusion, we consider the Collective Agreement Act as the one, of all our provincial labour legislation, which most encourages the social order. And we are convinced that if it is applied without restrictions of a nature to alter its importance and efficacy, it will continue to furnish all the benefits expected of it, that is, the same ones hoped for by our legislators.

J.-E. PICARD

DOCUMENTATION

THE RAND FORMULA IN THE ASBESTOS DECISION (1)

MAJORITY REPORT

The next modification sought deals with Clause 3 of the said contract. This is the clause, which, it has been agreed, is designated as the Rand Formula. We should point out immediately that this formula is not the one suggested by Mr. Justice Rand in the Ford Motor Company

matter. It is only a part thereof, as appears from exhibit P-15.

The Company asks that this clause be struck out from the contract. The Syndicate does not suggest any modification and desires statu quo.

This clause 3 bears upon contribution to syndical funds. It binds the employer to deduct, without the con-

sent of its employees, from the first pay of the month as regards all employees covered by the agreement, whether they be Syndicate members or not, an amount equal to the monthly dues payable to the Syndicate by its members and to remit the said sum to the Treasurer of the said Syndicate.

We believe this clause is exorbitant of the common law, that it is contrary to the principle of freedom which was to be the basis of syndicalism. It is also contrary to the dignity of the member and can even infringe upon his freedom of conscience.

When a Syndicate is certified as the negotiating agent in an industry, it is evident that it negotiates for all of the workers and not only of those who are members of the Syndicate.

Relying on this fact that even the non-members profit from its work, the Syndicate contends that the latter must pay to the Syndicate a remuneration equivalent to the syndical dues of the members. As the Syndicate has no direct claim against these persons who do not belong to the Syndicate, the latter wishes to make them pay, although indirectly, by obliging the employers to deduct from their salary, monthly, an amount equivalent to the Syndical due and to remit this amount so as to ensure Syndical security.

According to the principle of our law, one who invokes a claim against another and asks payment for same, must in the first place have his claim acknowledged by his debtor or have same established by the courts. Once this determination is made, the creditor will put the debtor in default to pay and, upon refusal, shall obtain a judgment against him and seize his property in execution of the said judgment. In no case has the creditor the right to do himself justice by paying himself out of the property of his debtor, without the consent of the latter.

Is it not what would in reality take place if the formula demanded by the Syndicate were admitted. Surely the Syndicate has a claim against its members who have undertaken to pay a monthly due. Again the latter have the right to pay their debt to the Syndicate themselves, unless they consent to transfer to the latter a portion of their salary in payment. The members of the Syndicate are not interdicts and must be free to administer their property. However, this monthly due which they owe to their Syndicate does not have for cause solely the negotiations of a collective labour agreement, but also all the other advantages which the worker is supposed to derive from the Syndicate. The object which is assigned to the Syndicate by the law is « the study, defense and promotion of the economic, social and moral interests of the profession ». (Professional Syndicates Law, S.R.Q. Chap. 162, Art. 3).

One who refuses to join the Syndicate is deprived of all such advantages. However, the Syndicate wishes to force him to pay not only for the advantages which may be derived from the collective labour agreement but also for the other objects which pertain to the members of the Syndicate alone. The non-syndical members surely are not obliged to pay for the advantages which the Syndicate members alone can derive from their association. Leaving aside any other consideration, it is surely not just that

the non-syndical members should be called upon to pay the same amount as the members of the Syndicate.

Do they owe compensation to the Syndicate for the advantages which the latter has procured through the negotiations of a labour agreement?

We are not dealing here with a lease of services contract. If a due may be imposed on its members, it is because the Professional Syndicates Act allows it (article 2, par. a) and such due is not a fee covering the work occasioned by the negotiations of a contract but rather one covering all the advantages which the Syndicate can procure to its members.

If the labour contract brings some advantages to workers who are not syndicate members, it is by the effect of the law and it does not follow that the Syndicate may impose payment of a due which by law may be asked from its members only. It often happens that the work of an association benefits those who do not belong to it. It does not follow that they should pay the association a due. The Syndicate workers are governed by the law which gives them their existence and they may not exceed the powers attributed to them by their constitution.

Nor can it be contended that this syndical security formula is a working condition which may become the object of a collective labour agreement clause. The Syndicate must not seek its security in a labour agreement. Such agreement has no purpose other than the determination of the employees working conditions and their relationships with their employer. It deals in no way with the relationships of the Syndicate members with the Syndicate. The Syndicate's security shall result rather from the conviction of its members, a conviction measured in terms of the advantages they will derive from their Syndicate.

The employer may not deduct a portion of the worker's salary, unless with the latter's authorization or in virtue of a Court Order or of a seizure in garnishment. A deduction made otherwise would expose the employer to a law suit by the worker, for the latter is entitled to the integral remittance of his salary, less only those deductions allowed by law, for instance, taxation on revenue. This clause of syndical security for the non-syndicate worker is a « res inter alios acta ». It is a principle that one may not do indirectly what he may not do directly. Now, the law does not allow the imposition of a due by the Syndicate to those who are not members. Nor can the Syndicate do so indirectly within the frame-work of a collective work agreement.

This formula of syndical security, as regards the non-syndicate workers, strangely resembles a tax. A Municipal council has the right to tax all the taxpayers of the Municipality itself for objects from which many do not profit, because the law gives the Municipality such a power. The professional syndicate has a right of taxation against its members only.

Article 17 of the Professional Syndicates Act of Quebec provides that the members of a professional syndicate may deduct at will, without prejudice to the right of the syndicate to claim dues for those three months following the cancellation of membership. What shall

become of this freedom given by the Professional Syndicates Act if the Syndical members, against their will, face deduction from their salary for a year, by the employer, of an amount equivalent to the due imposed by the Syndicate? This agreement is valid for a year. If, in the middle of the year, a syndical member wishes to discontinue his membership, the Company, according to the actual clause 3, shall be obliged to continue deducting from the worker's salary an amount equal to the syndical due. A worker would, therefore, be morally forced to remain a syndical member because he would see himself obliged to continue payment of his dues.

A worker may, of course, renounce his right to withdraw from the Syndicate but, in such a case, he would have to sign an authorization allowing his employer to deduct from his salary an amount equivalent to the syndical contribution for the duration of the agreement.

This liberty is sanctioned by the constitutions and by-laws of the C.T.C.C., filed as exhibits P-68. On page 4, we read the following:

« Elle sait que l'organisation professionnelle ne peut pas plus être imposée aux travailleurs qui n'en voudraient pas, que l'association patronale peut être imposée aux patrons qui voudront garder leur liberté ».

(Translation, which follows hereunder, does not appear in the decision)

« It knows that professional organization can no more be imposed to workers who would not wish it, than the employers' association can be imposed to employers who would want to retain their freedom ».

Taking away from a worker, against his will, the faculty of paying his syndical dues himself, is contrary to the liberty and dignity of the human being. The workers are free men. They must enter their syndicate freely and submit voluntarily to the by-laws of their association. The Syndicate does not respect the freedom of its members nor their dignity, if, to ensure its own security, in a contract with the Company, it binds the latter to deduct from the syndicate members' salaries, without their consent, the equivalent of their syndical dues. The strength and life of a syndicate does not rest in the amount of money it may dispose of, but in the number of its members convinced and devoted. A member who voluntarily joins an association shall abide more readily with its by-laws and become precisely in virtue of this principle of liberty, an ardent defender of its syndicate.

What should now be said of this clause 3 in as much as it applies to those who are not members of the syndicate?

Let us say right away that article 22 of the Labour Relations Act prohibits resorting to intimidation or threat with the view of having one become a syndicate member. Is there a more formal intimidation, so as to have one become a syndicate member, than to impose on him, without his consent and without consulting him, the payment of a syndicate due, to an association which he does not wish to join?

The Syndicate, in a contract with the Company, may not give itself the power to deduct a due from persons who are not parties to said contract and who wish to remain free from any connection or again who prefer to belong to another syndicate. The fact that all the workers

covered by the labour collective labour agreement benefit from the work accomplished by the syndicate to that end, cannot justify this procedure.

Moreover, we find in the constitution and by-laws of the C.T.C.C. (Exhibit P-68) the principle upon which must be established the Syndicates affiliated to the said Federation. In them we see that the aim of the association is to group the catholic workers of Canada so as to give them a professional organization in conformity with the social doctrine of the Church. At page 12 we read the following:

« La C.T.C.C. est une organisation franchement et ouvertement catholique. Elle ne s'affilie que des associations catholiques, elle adhère à toute la doctrine de l'Eglise et elle s'engage à suivre toujours et en tout la direction du Pape et des évêques canadiens ».

(Translation, which follows hereunder, does not appear in the decision)

« The C.T.C.C. is truly and openly a catholic organization. It will affiliate only with catholic associations, adheres wholly to the doctrine of the Church and it undertakes to follow at all times and in every way the directions of the Pope and Canadian Bishops ».

It may happen that in a large industry there could be employees who, in good faith, do not profess the catholic religion but adhere to other denominations. It may also happen that these people, to follow the inclination of their conscience, would prefer to adhere to neutral syndicates. What freedom will they have if, to earn their living, they are forced to pay a due to the catholic syndicate to which they do not wish to belong, and perhaps also another fee to the syndicate of their choice. Is this not a threat to the freedom of conscience as well as to the freedom of work?

We admit without reserve that syndicalism is an excellent thing. One after the other, the Popes have recommended to all workers to join their syndicate but this adhesion must be free and voluntary. The right to work is a natural right and cannot be subordinated to a form of adhesion to a syndicate. Once more, forcing a worker to pay a due to a syndicate is equivalent to forcing him to form part of such syndicate. Clause 3 is contrary to freedom and we cannot maintain it.

We admit, however, that the Syndicate has a right to a certain degree of security. It would not be just, if, after the syndicate would have worked and secured an advantageous collective agreement for its members, the latter immediately ceased forming part of said Syndicate so as to avoid payment of dues yet continuing to enjoy the advantages of this collective agreement. We therefore are in favour of a formula whereby the Syndicate members, at the beginning of the year covered by the agreement, would authorize their employer for the duration of the agreement, to deduct from their salary the amount of their syndical dues and remit the said sum to the Syndicate. This authorization should be irrevocable for the duration of the agreement, except the right of the employee to signify to his syndicate and to his employer, his desire to withdraw from the syndicate at the latest

30 days before the expiration of the agreement. This formula would have the following consequences:

1. It recognizes the principles of liberty for the worker to join a syndicate of his choice, or stay out of the syndical movement.
2. It also sanctions the principle that the obligations assumed by the worker to his syndicate do not come within the realm of the obligations of the employer, unless the worker signs an authorization for the employer to deduct from his salary what he, the worker, owes to his syndicate.
3. It protects the syndicate because the worker who has voluntarily agreed to sign a delegation of payment covering his syndical dues for 12 months, cannot go back on his word.
4. It also brings to light this truth, that the syndicate's security can only be ensured by its members. To affirm the contrary would be equal to wanting to impose a tax upon all the workers to ensure the life of the syndicate. What then would the principles of syndicalism become?

Clause 3 of the collective agreement shall therefore read as follows: (Me Lespérance is dissident on this question)

«The Company will deduct from the first pay of each month an amount equal to the fee payable to the Syndicate by its members and it will remit the said amount to the treasurer of the Syndicate within the following 10 days with a list of names of the employees from whom these monies will have been retained, but under the following conditions:

1. The Syndicate member will authorize, in writing, the Company to make said deduction from his salary and this authorization will be irrevocable for the duration of the present contract and shall be made in accordance with « Schedule J » attached to and forming part of the present agreement.
2. Any Syndicate member who will have signed said authorization may revoke same by written notice given to the Company at any time between the sixtieth and thirtieth day previous to the expiration of said contract. This revocation will be signed in duplicate, utilizing Schedule K attached hereto, and a copy of said revocation shall be sent by the Company to the treasurer of the Syndicate within the first ten days of the following year.

The Syndicate will, from time to time, give written notice to the Company of the amount set for said monthly dues, which are not to exceed \$1.50 per month ».

MINORITY REPORT

The collective agreement signed last year provided for the compulsory check off of union dues for all the workers whether they were union members or not (Rand formula). The employer has made no attempt to prove before the board of arbitration that this regime had created any difficulties. He has only brought forward many legal arguments which merely set up an individualist

conception of the civil Law in opposition to that concept which declares the necessity of professional organization.

The whole of our legislation recognizes the practical necessity of the labor union as a normal means for employees to attain social justice.

It is only when this union organization is set up and officially recognized, that the employees can, by their concerted action, obtain a fair hearing of their claims.

Is it not perfectly reasonable that they want to insure the security of such a necessary organization.

«The employees as a whole, says Mr. Justice Rand, become beneficiaries of union action, and I doubt if any circumstance provokes more resentment in a plant than this sharing of the fruits of unionist work and courage by the non-member. It is irrelevant to try to measure benefits in a particular case; the protection of organized labour is premised as a necessary security to the body of employees... I consider it entirely, equitable then that all employees should be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract; that they must take the burden along with the benefit.

The obligation to pay dues tend to induce membership and this in turn to promote that wider interest and control within the union which is the condition of progressive responsibility. If that should prove to be the case, the device employed will have justified itself. The union on its part will always have the spur to justify itself to the majority of the employees in the power of the latter to change their bargaining representative. »

All the legal objections related in the majority report have been triumphantly refuted in different publications. It seems useless to say anything more on this, but to note that it is very significant that not one among the several employers accepting the clause of union security has seen it attacked before the Court.

As for the objection drawn from the « confessionality » of the union, we must remember that the compulsory check off of union dues was devised in order to attenuate the difficulties brought about by the clauses of compulsory union membership.

How can any one seriously pretend that the employee's freedom of conscience is restrained by the obligation to pay a limited amount of dues to the union, which dues just cover its administrative cost and are thus used to the benefit of the whole group of which the union is the legal representative.

Can any one counteract more thoroughly the episcopal teaching in favor of catholic unions that by citing their official submission to the Church as a pretext for refusing them the benefit of a formula of union security which has become of current use and which neutral unions are using with success.

(1) *Asbestos Corporation Limited and le Syndicat national des travailleurs de l'amiante de l'Asbestos Corporation Limited, Inc. — Majority report, Montreal, December 10, 1949. — President: Mr. Justice Thomas Tremblay, Company Arbitrator: Me Raymond Caron, Union Arbitrator (dissident): Me Théodore Lespérance.*