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Is the Labour Relations Board a Judiciary Tribunal

Me. Marie-Louis Beaulieu, c.r., *Lawyer, Quebec Bar*

A very interesting decision for the labour-world was rendered by the Superior Court of Quebec on August 10th of last year, in a matter implicating the Labour Relations Board, an insurance company as employer, and a local of the American Federation of Labour as the trade union. It is in connection with the judgment pronounced by the Honorable Judge Wilfrid Edge upon a request to issue a writ of certiorari to suspend the enforcement of three decisions of the Labour Relations Board on the occasion of a demand for union certification: Quebec Superior Court, No. 58,845, The Prudential Insurance Company of America, plaintiff, vs. The Labour Relations Board of the Province of Quebec & the Honorable Judge L. Conrad Pelletier, Alfred Charpentier, Elphege Beaudoin, H. Conrad Lebrun & Pierre Audet, defendants & The National Federation of Insurance Agents Council, American Federation of Labour, Local 24, 538.

The case was interesting from more than one point of view: when should a secret vote be granted by the Labour Relations Board ? What sort of proof should the Board demand to support its decisions ? May a member of the Board who was not present at the hearing, participate in the rendering of the judgment ? In what instances should the Board revise or revoke its decisions, the orders it has rendered or the certificates it has issued ? What constitutes judiciary abuse or excess on the part of the Board ? Is the Board a judiciary tribunal or an administrative organization ? This last matter alone was decided upon by the court. In view of the decision at which the court arrived in this regard, there was no reason for it to study further the other questions, or to go on and examine the complaints submitted to it against the decisions of the Board in order to obtain a writ of certiorari.

The petition was based on Article 1292 and 1293, Code of Civil procedure: "1292. In all cases where no appeal is given from the inferior courts mentioned in articles 59, 63, 64 and 65, the case may be evoked before judgment, or the judgment may be revised by means of a writ of certiorari, unless this remedy is also taken away by law."

1293. The remedy lies, nevertheless, only in the following cases: 1. When there is want or excess of jurisdiction; 2. When the regulations upon which a complaint is brought or the judgment rendered, are null and of no effect; 3. When the proceedings contain gross irregularities and there is reason to believe that justice has not been, or will not be done."

The Labour Relations Board had been opposed to the petition because, as it said, it (the Board) "is an administrative organization which does not come under article 1292 C.C.P." The Court declared that it was right and rejected the petition, refusing to demand the issuance of the writ, and I think that is what it should have done. "In the affirmative, it would be useless to consider any other matters concerning the petition of the plaintiff", said the Honorable Judge Edge.

The learned judge began by citing Halsbury, volume VIII, p. 526: "Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment committees, etc., etc."

After that, he cites the famous decision of the Court of Appeal in the case of Slanec vs. the Workmen's Compensation Commission, 54 King's Bench, p. 230, where, with dissent, the Court of the King's Bench decided that "Article 36 of the Act of 1928 concerning workmen's compensation (18 Geo. V, c. 79) as well as the Act of 1928 respecting the Workmen's Compensation Commission (18 Geo. V, c. 80) are valid: the Workmen's Compensation Commission is not a superior court, nor a district court nor a county court, according to the meaning of Article 96 of the Constitutional Act of 1867."

This judgment, it is true, can be applied only partially to the case which we are considering; however, it renders the problem much more clear. In view of the nature of this study, there is no reason to examine, even briefly, the two authorities called upon by the Honourable Judge Edge.

The doctrinal reasons he gives motivating his decision seem to me unquestionable. They rest upon one of the distinctions one must make between conflicts of rights and conflicts of interests, and the jurisdiction capable of hearing both of them. As far as I know, it is one of the rare decisions of our courts where these questions were studied. Let us first quote the judgment.

"The Board pronounces on questions which precede the existence of a right.

"In the ordinary course of things, they are administrative rather than judiciary, those tribunals which reach the public by their orders.

"Judiciary tribunals are in charge of legal acts and legal acts are almost invariably acts against individuals, while administrative organs carry out their powers for reasons of utility which means obviously that they regulate themselves according to the demands of the public interest.

"But a judiciary tribunal does not create any legal rights; it hears a claim for which a legal right exists and it pronounces on whether or not such a claim is well-founded or not. It confers nothing; it simply puts into action the rights which the parties already possess. Thus, when a board confers a certification, it is obvious that it does not act in a judiciary manner. If a party has a legal and preexisting right to a certificate, a judiciary tribunal can have it put into effect, but such a tribunal does not confer the certificate.

"*Conclusion*: The Board creates the right, but this creation does not constitute a judiciary function."

This decision will be carried in the coming issues of Pratique Reports.

It would have been interesting to study here the distinctions between individual and collective conflicts, between conflicts of rights and conflicts of interest, and the role these distinctions play in the attribution of jurisdiction to judiciary tribunals and to arbitrators, as well as to the Labour Relations Board; but we found it preferable, for this time, at least, to limit ourselves to a jurisprudential consideration of the matter which constitutes the title of this article. We shall return, then, to this question.

The question of knowing what constitutes the Labour Relations Board, a judiciary tribunal, an administrative organization, a corporation, had already been submitted to the Superior Court of Quebec. It was in 1947, in the case of Q.S.C. No. 52461, the Employers' Association of Shoe Manufacturers of Quebec, plaintiff, vs. Dependable Slipper & Shoe Mfg. Co., Ltd. and the International Union of Fur and Leather Workers of the United States and Canada (local 500) and J. Alfred Boivin and Abraham Feiner, as arbitrators, defendants, and the Labour Relations Board of the Province of Quebec, party to the case. It was a question

of a petition made by the Employers' Association and asking for an interlocutory injunction against the employer, a member of the Association, against the arbitrators, and against the Board, at the beginning of arbitration proceedings on the occasion of the negotiation of a collective agreement. The petition was dismissed by the decision of the Honorable Judge Oscar Boulanger, as of August 30, 1947. After having decreed that the petition could not be granted against the employer, here is what the learned judge stated concerning the point of interest to us:

"As far as the Labour Relations Board is concerned, its members are civil servants appointed by the government to assist the Minister of Labour in administering the Labour Relations Act. The Board is neither a corporation nor a judiciary person. As the Act states: it is "an organization", an organization of the civil government of the Province which acts according to the instructions of the Minister of Labour. Article 87a, C.C.P. is applicable to the Labour Relations Board according to the opinion of the court, and there is no reason for injunction proceedings against such an administrative organization."

The petition against the arbitrators was also dismissed.

This question has lately constituted the object of a recent decision of the Superior Court of Quebec, the Honorable Judge Alfred Savard, presiding, in the case of Q.S.C. 56,299, Catholic Professors' Alliance of Montreal, plaintiff, vs. the Labour Relations Board of the Province of Quebec & al, defendants, and the Catholic School Board of Montreal, party to the cause. As this judgment is at present under appeal, we shall limit ourselves to stating that in this case, there is a petition for a writ of prohibition against the Labour Relations Board following a revocation by the Board of a union certification, that the writ was issued and that the court sustained it. We intend to return to this question as soon as the Court of the King's Bench shall have rendered a decision, and on this occasion, we shall make a critical analysis of the three judgements which have just been considered. In this article, we shall ask the question first of all: what is the Labour Relations Board: a judiciary tribunal, an administrative organization, a corporation ? Without being a judiciary tribunal, a court of justice, does it not exercise judiciary or quasi-judiciary functions ? We shall attempt to give, in a more detailed manner than the magistrates who decided in favour of such and such a side, the reasons supporting their judgements. That is said not in a sense of criticism, for judges are not law professors, and as soon as they have a good motive for deciding in one way or the other, there is no reason why they should go any further. We shall also ask ourselves under what jurisdiction and by what proceedings may the decisions of the Labour Relations Board be attacked. When may the Board, "for cause, revise or revoke all decisions and orders rendered by it and all certificates it has issued", as Article 41 of the Labour Relations Act states ? Does the Board possess other powers of jurisdiction than those which this Act gives it ? We shall examine appeal through certiorari, refused by the Honorable Judge Edge; the writ of injunction, rejected by the Honorable Judge J. Oscar Boulanger; the decision which the Court of Appeals shall have rendered on the writ of prohibition sustained by the Honorable Judge Alfred Savard.

The above questions should prove very interesting and practical for lawyers, officers of trade unions or employers' associations, employers, civil servants, and for all those who are concerned with employer-employee relations.