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Ontario Court Limits Number of Picketers

Date: April 7, 2010

In a decision released March 24, 2010, the Ontario Superior Court imposed significant restrictions on picketing activities taking place at Vale's Sudbury premises. Three valuable points emerge from this decision. First, the Court has sent a clear message that it will not tolerate flouting of the law, which in this case was four prior court orders. Second, picketers cannot hide their identities on the picket line. Third, this decision signals the need to have police enforce court orders.

THE DECISION

The issue in *Vale v. USWA Local 6500 et al*, 2010 ONSC 1774 (CanLII) arose further to a lawful strike at Vale which had commenced on July 13, 2009. In this motion, Vale sought an injunction to limit the number of picketers, arguing that the terms of earlier court orders were being breached and that large numbers of picketers were hiding their identities while committing criminal acts.

The four previous court orders had been issued to accommodate the conflicting interests of the parties. One of the court orders stated that picketers could only picket at established picket lines and could only delay vehicles entering the premises for no more than 12 or 15 minutes, depending on the time of day.

Justice Gordon found 40 incidents of non-compliance with the previous court orders. Delays ranged in excess from 27 minutes to seven hours. There were several incidents of mass trespass, assaults, vandalism to property, threats and intimidation. Many of these criminal acts were committed by large numbers of picketers wearing balaclavas or Halloween masks.

Justice Gordon found that Vale met the preconditions for injunctive relief. He considered the conflicting interests at play: the union's right to informational picket under the *Charter*; Vale's right to access its property and carry on its business; the safety of persons crossing the picket line; and the community interest of upholding the law.

The Court held that while there should be some expectation by Vale that access to its property would be impeded by lawful picketing in accordance with previous court orders, it is inappropriate that it be denied access outside of those protocols or through other tortious or criminal behaviour.

Justice Gordon also commented on the importance of ensuring persons crossing the picket line do so safely. It is "bad enough" that people were significantly delayed, but it is completely unacceptable that they had to endure intimidation "such as having their pictures and licence plate numbers taken, having their vehicles surrounded by picketers, and having profanities hurled at them".

Finally, Justice Gordon stated that the rule of law must be upheld. He stated that the community has little tolerance for the deliberate disregard of court orders.

Justice Gordon concluded that the Court must intervene and impose further restrictions on picketing. He ordered that the number of picketers at each established picket line location be limited to eight and that picketers must not hide their faces by wearing balaclavas or masks. These restrictions were necessary because the more serious incidents of violence and intimidation took place when large groups of picketers were present wearing balaclavas.

To ensure his order and previous court orders were enforced, Justice Gordon included a provision requiring the police to

intervene to stop any future breaches.

Should you have any questions regarding this decision, contact your regular Hicks Morley lawyer.

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