

Jurisdiction of courts and arbitrators: the Supreme Court of Canada applies *Weber*

The Supreme Court of Canada has recently released two judgments that apply the landmark 1995 decision, *Weber v. Ontario Hydro*. In *Weber*, the issue was the extent to which a unionized employee could have access to the courts - as opposed to arbitration - to pursue a claim against the employer. The Court opted for an "exclusive jurisdiction" model, which denies access to the courts if the essential character of the dispute arises from the interpretation, application, administration or violation of the collective agreement.

The two decisions, *Goudie v. Ottawa* and *Allen v. Alberta*, both delivered on March 20, 2003, demonstrate how, under the *Weber* approach, two superficially similar cases can have opposing results.

GOUDIE: PRE-EMPLOYMENT AGREEMENT GIVES COURTS JURISDICTION

In *Goudie*, the employees were Animal Control Officers who had been transferred from the Ottawa Police Force to the City of Ottawa. The employees alleged that, before the transfer was effected, a meeting took place between the employees' current and future employers and unions at which it was agreed that the employees' terms and conditions of employment would be maintained after their transfer to the City.

Following the transfer, the employees, who had been working a 35-hour week with the Police, were told they would be working 40 hours a week, along with other municipal employees. Some years later, the employees eventually commenced a court action based on the pre-employment agreement they alleged existed between them and the City. The City denied that any such agreement existed, and moved to have the action dismissed on the basis that the court had no jurisdiction over what was a labour relations matter.

The Supreme Court of Canada sided with the employees, holding that, because the rights claimed by the employees flowed from the alleged pre-employment agreement, the courts had jurisdiction over the dispute:

"If, as alleged, the [City's] officials agreed to a pre-employment agreement with the [employees] in September 1983, it seems apparent that a dispute over such an agreement, in its essential character, could not arise from the collective agreement between CUPE and the City. For one thing, the [employees] were not employees of the City in September 1983. For another thing, the [employees] were not at that time in the bargaining unit or members of CUPE, Local 503. They were employed by the Ottawa Police Force, which is an entity separate and distinct from the Corporation of the City of Ottawa. ...

If a pre-employment agreement was made in September 1983, as alleged, a claim

for its enforcement cannot be said to arise from the interpretation, application, administration or violation of the CUPE collective agreement."

ALLEN: RIGHT TO SEVERANCE PAY ARISES UNDER THE COLLECTIVE AGREEMENT

As in the *Goudie* case, *Allen* involved employees who were transferred between employers - this time due to a privatization of government services - and an agreement that affected the rights of the transferred employees. In this case, the employees' union had signed a letter of intent with the government in which it was agreed that, if the employees accepted employment with the new privatized agency, they would not receive the severance to which they would otherwise have been entitled under the collective agreement with the government. The letter of intent had a provision stipulating that it did not form part of the collective agreement and was not subject to the grievance procedure.

Several years after accepting the new employment, the employees went to court, claiming that their departure from the government had not been voluntary, and seeking a declaration that they were entitled to the severance pay provided for in the collective agreement. The government moved to strike the claim as being outside the court's jurisdiction.

This time, the Supreme Court of Canada sided with the employer, holding that the claim was within the exclusive jurisdiction of an arbitrator. Here, the Court held, the essential character of the dispute concerned the employees' entitlement to severance, which was a subject matter covered by the collective agreement. Further, the existence of the letter of intent did not alter this conclusion:

"Any entitlement to severance was based on the collective agreement. Absent this provision, the [employees'] right to the severance pay they claim does not exist. The letter of intent did not change the legal situation of the parties. Any claim that severance pay had been lost through resignations procured under duress would have fallen in all its aspects within the jurisdiction of the arbitrator. In the course of the arbitration, the question as to whether the letter of intent was a bar to the claim would have been raised and dealt with by the arbitrator. Even if it was not formally a part of the collective agreement, the letter was at least an agreement which addressed potential grievances and the status of employees who were being transferred to a new employer."

In Our View

These divergent decisions show that care must be taken when analyzing the issue of jurisdiction. Both involved agreements that appeared to affect the rights of the employees and that were outside of the terms of the existing collective agreements. However, in *Goudie*, the alleged agreement conferred the rights being claimed, whereas in *Allen*, the agreement purported to terminate a right that was conferred by the collective agreement. (For another case that applies *Weber*, see "[Fine-tuning Weber: unionized employee can sue for malicious prosecution](#)".)

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