

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2014/0053

**In the matter of an Application by International General Enterprises limited
for an Order for Certiorari and other relief**

-and-

**In the Matter of a Decision of the Acting Labour Commissioner
dated the 30th day of October 2013**

-and-

**In the matter of Sections J3, J4 and J12 of the Antigua and Barbuda Labour Code Cap. 27
of the Laws of Antigua and Barbuda**

BETWEEN:

INTERNATIONAL GENERAL ENTERPRISES LIMITED

Claimant

AND

THE ATTORNEY GENERAL

THE LABOUR COMMISSIONER

Defendants

Appearances:

Arthur Thomas, Loy Weste and Lisa Weste of Thomas, John & Associates for the Claimant
RoseAnn Kim and Carla Brooks Harris of the Attorney General's Chambers for the Defendants

2016: April 8

JUDGMENT

- [1] **HENRY, J.:** International General Enterprises Limited (International General) challenges the certification issued by the Labour Commissioner on the 30th October 2013 wherein she certified the Antigua and Barbuda Free Trade Union (the Union) as the sole bargaining agent of the Line Staff

Employees of International General. International General contends that the Union was not selected by a majority of the employees in the unit as required by the Labour Code and therefore ought not to have been so certified. For the reasons set out below the court agrees and finds in favour of International General.

[2] The facts leading to certification are not in dispute. Briefly, there was an agreed list of 60 persons who comprised the bargaining unit. A secret ballot was held on the 22nd October 2013. The result of the poll showed that of the 60 employees only 23 participated. Twenty-one (21) votes were cast in favour of the Union and two (2) against. By letter dated 23rd October 2013, International General sought a certificate from the Labour Commissioner that no trade union had received a majority of the valid votes cast by the employees in the bargaining unit and therefore no union is entitled to be their sole bargaining agent. However, the Labour Commissioner issued a certificate dated 30th October 2013 wherein it was certified that in accordance with sections J4 and J12 of the Antigua and Barbuda Labour Code (the Labour Code) the Union, having been elected by the majority of the Line Staff Employees is the sole bargaining Agent.

[3] By Fixed Date Claim filed on 27th February 2014, the claimant seeks the following orders:

- (1) An order for certiorari to remove into this Honourable Court and quash the decision of the second defendant as contained in the Certificate issued on the 30th October 2013 that the Antigua and Barbuda Free Trade Union is the sole bargaining agent of the Line Staff Employees of the Applicant.
- (2) An order of Prohibition preventing the second defendant from recognizing the Antigua and Barbuda Free Trade Union as the Certified Sole Bargaining agent of the Line Staff Employees of International General Enterprises Limited until the determination of these proceedings;
- (3) A Declaration that the decision to certify the Antigua and Barbuda free Trade Union as the Certified Sole Bargaining agent of the line Staff Employees of International General Enterprises Limited is wrong and *ultra vires* the Antigua Labour Code, and that the current finding ought to have been that there was no clear winner according to the Antigua and Barbuda Labour Code;
- (4) An Order for Mandamus to oblige the Second Respondent to reconsider her decision and certify that no trade union has received the majority of the valid votes cast by the Employees in the involved bargaining unit and that therefore no union is entitled to be their sole bargaining agent, pursuant to section J12(iii) of the Antigua Labour Code;
- (5) Further or other relief as this Court deems fit; and
- (6) Costs.

Claimant's Submissions

[4] International General submits that the decision of the Labour Commissioner to certify the Union as the sole bargaining agent is *ultra vires* the provisions of sections J3, J4 and J12 of the Labour

Code. International General contends that the definition of the word "majority" in section J12 must be interpreted in the context of sections J3 and J4; that those sections taken together mean that the Union can only be certified as sole bargaining agent if it is selected by a majority of the employees in a unit; that the Union did not obtain such a majority vote of the employees in the unit; that the Union only received 21 votes out of 60 employees; and therefore the Labour Commissioner was not entitled to declare the Union as the winner of the secret ballot. Her decision was therefore ultra vires.

- [5] Further, International General submits that it was unreasonable and an abuse of discretion for the Labour Commissioner to certify the Union as the sole bargaining agent. Its position is that the reasons set out in the Labour Commissioner's letter dated 20th November 2013 as the reasons for certifying the Union illustrate that the Labour Commissioner was unreasonable and abused her discretion in issuing the said Certificate. The Labour Commissioner, claimant contends, ignored the provisions of J4 and J3 which clearly define how a trade union can be certified as a sole bargaining agent. Accordingly, International General submits it is entitled to have the decision of the Labour Commissioner quashed.
- [6] International General refers the court to several cases, including, **The Sussex Peerage Case**¹; **Savarin v John Williams**²; **Jalousie (1996) Ltd v Labour Commissioner**³ and **Liberty Club Ltd v The Attorney General et al**⁴

Defendants Submissions

- [7] The defendants submit that notwithstanding that section J12 refers back to section J4, section J12 which addresses certification by the Labour Commission is the section which provides guidance to the Labour Commissioner on the criteria necessary for the issuance of the Certificate and not section J4. The defendants contend that the drafter's intention is clear and unambiguous. Notwithstanding the reference to a majority in the unit as set out in section J4, it is clear that a Certificate can only be issued based on the employees who have cast valid ballots. The defendants reject the claimant's position that the sole bargaining agent must be determined by a majority vote of all employees in the unit. The defendants submit that section J12 (a), (b) and (c) provides that the Labour Commissioner having assessed the votes casts will certify, decertify or refuse to certify a trade union as the sole bargaining agent and these steps must be taken in accordance with the results of the poll depending on the majority of the employees who have cast valid ballots. Further, the defendants refer to the national policy set out in section J2 and submit that it is clear that the majority decision of a group of employees participating in a poll will be accepted as the decision of the entire group.

¹(1844) 11 CI & FN 85

²(1995) 51 WIR 75

³Claim No SLUHCV2004/0498, Edwards J.

⁴Grenada Civil Appeal No 8 of 1995, Judgment delivered January 29, 2006

- [8] The defendants also refer to the above mentioned cases.

Analysis and Discussion

- [9] Division J of the Labour Code deals with resolution of employee representation questions. The national policy is set out in section J2. It provides:

J2.(1) The following is the national policy underlying this Division:

(a) whereas the failure to resolve questions as to the existence, and the extent, of the desire of employees for bargaining representation is a cause of concern, unrest, and industrial strife;

(b) whereas, in the interests of equalizing the bargaining power of employer and employees,, *a fundamental principle of industrial life is that the choice of a majority of a group of employees should be the sole bargaining representative of the entire group*; and

(c) whereas it is equally important that, if there is no majority choice, no trade union should be the sole bargaining representative of the entire group.

(2) It now becomes necessary to create a machinery whereunder questions concerning representation can be resolved, machinery under which-

(a) a unit of employees appropriate for collective bargaining purposes can be fixed;

(b) there shall be a secret ballot in which the uncoerced desires of the employees in an appropriate bargaining unit can be ascertained; and,

(iii) in the interests of industrial stability, the choice of said employees thus demonstrated shall be effective for a reasonable period thereafter; but,

(iv) after a reasonable period has passed, there shall be the opportunity for said employees to express themselves anew in a secret ballot.

(3) *The choice of the majority of an appropriate unit of employees, having the obligation to represent all employees in said unit for bargaining purposes, may receive remuneration for its services.*

- [10] In interpreting the various sections in Division J, it must be assumed that the intent of the draftsman was to reflect the national policy in the various provisions and certainly in seeking to resolve any apparent conflict between the sections, consideration must be given not only to specific sections but to the Division as a whole, including the national policy.

- [11] Section J (2) declares it the intention of the section to create a machinery under which questions concerning representation can be resolved; a machinery under which a unit of employees appropriate for collective bargaining purposes can be fixed. The section further provides that there should be a secret ballot in which the uncoerced desires of the employees in an appropriate

bargaining unit can be ascertained. Section 2 (1) (b) establishes the fundamental principle that the choice of a majority of a group of employees should be the sole bargaining representative of the entire group. The words "participating in a poll" are not found in the section and ought not to be imported into the section. The plain meaning of the stated words is that the sole bargaining representative of the group is the choice made by the majority of the employees of the entire group. If there is no majority choice, no trade union should be the sole bargaining representative of the entire group.

- [12] Frequently modern statutes contain a set of provisions labelled "Interpretation". When an interpretation section states that a word or phrase "means...", any other meaning is usually excluded⁵. The main purpose for having a word or phrase defined in a statute is to have consistency so that the word or phrase will have the same meaning whenever it is used in the legislation. Division J contains its own interpretation section. It is found in section J3.
- [13] Section J3, provides that 'sole bargaining agent' means the representative of a bargaining unit of employees as described in section J4.
- [14] Section J4 provides as follows:
- "J4. Despite the general rule laid down in section K3 that an employee may be represented for bargaining purposes by an agent of his own choice or by no such agent, a registered trade union designated or *selected for such purposes by a majority of the employees in a unit appropriate for collective bargaining purposes* shall be the sole representative of all the employees in employment in said unit for the purposes of collective bargaining purposes in respect of the working conditions therein."
- [15] In section J4 the word "majority" is qualified by the words "of employees in a unit appropriate for collective bargaining purposes". As noted by Byron J.A. (as he then was) in the **Liberty Club** case, those words cannot be said to show an intention to allow the certification of a union representing no more than a majority of those members actually voting⁶. The court is required to ensure that in its interpretation of statutes, effect is given to the intention of Parliament. Here, the intention is clearly and unambiguously expressed. To qualify as the sole bargaining agent, a registered trade union must be designated or selected by a majority of the employees in a unit appropriate for the collective bargaining purposes. This is consistent with the meaning expressed in the national policy.
- [16] There is no issue between the parties that the bargaining unit in this matter comprised an agreed list of 60 persons. The result of the secret ballot is also not in contention. The Tally of Votes issued by the Labour Commissioner sets out the following:

No. of eligible voters at time of election

60

⁵ Cross, Statutory Interpretation Third Edition Chap. 5 page 119

⁶ At page 72

No. of votes cast	23
No. voted Antigua and Barbuda Free Trade Union	21
No. voted "No Union"	2

[17] In support of its position, the defendants refer to section J12 as the section which addresses certification by the Labour Commissioner and which they say provide guidance on the criteria for issuance of the certificate.

[18] Section J12 provides:

"After all objections or challenges are disposed of, the Labour Commissioner shall issue a certificate in accordance with the latest revised Tally of Votes; depending upon the votes of a majority of the employees who have cast valid ballots, which for the purposes of this Act shall, constitute a "majority" as used in section J4, he shall , as the case may be, either

(a) Certify a registered trade union as the sole bargaining agent of the employees in the involved bargaining unit;

(b) Decertify a trade union currently recognized as sole bargaining agent; or

(c) Certify that no trade union has received a majority of the valid votes cast by the employees in the involved bargaining unit and that therefore no union is entitled to be their sole bargaining agent."

[19] Before examining the provisions of section J12, it is important to note that section J11 sets out the detailed procedures for conducting the secret ballot. Section J11 (9) provides for the filing of objections to the conduct of the secret ballot within 5 days of the issuance of the Tally of Votes. If the Labour Commissioner is of the opinion that the objections raise relevant issues, the objections are referred to a Hearing Officer.

[20] When the hearing of the objections have been concluded, and after the procedure set out for determining the validity of the ballots has been followed, the Hearing Officer issues his decision on the validity of the challenged ballots. The Hearing Officer recommends to the Labour Commissioner which of the challenged ballots, if any, should be counted and added to the Tally of Votes and which should remain uncounted. Thereafter, the Labour Commissioner conducts a recount, including any challenged ballots declared by the Hearing Officer to be valid, and thereupon the Labour Commissioner issues a revised Tally of Votes.

[21] It is in this context that J12 provides that after all objections or challenges are disposed of, the Labour Commissioner shall issue a certificate in accordance with the latest revised Tally of Votes. The section provides that the valid ballots cast (as opposed to those ballots which remain invalid after the hearings are concluded), are the votes to be counted in arriving at a decision as to whether the Union has received a "majority" as used in J4. In this matter there is no allegation of

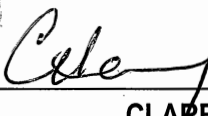
any objections or challenges made after the secret ballot was conducted. In any event, J12 does not propose a new and different standard for qualification as sole bargaining agent. By referring to J4, the section re-affirms that the definition of sole bargaining agent as described in J4. Only the valid ballots cast shall be considered (counted) in determining whether the Union has received a majority of the votes of the employees in the unit. To hold otherwise would not be in harmony with the meaning of the other sections in the Division or with the expressed national policy.

[22] The defendants refer to two other sections: section J6 and section 11(4). These sections do not alter the definition in section J4. Section J6 provides the requirements for initiation of proceedings. It does not purport to address certification. Section 11 (4) addresses the content of the Notice of Elections required to be posted at or near the work place. It refers to the majority of the valid votes cast. This section cannot be read in isolation, but must be interpreted in light of the other provisions of the Division.

[23] The court is of the view that Section J12 when read in conjunction with sections J3 and J4 require the Labour Commissioner to certify a registered Union as the sole bargaining agent of the unit only where that Union has been selected by the majority of the employees in the unit. The Union did not receive a majority of the valid votes in the unit and therefore ought not to have been certified as the sole bargaining agent for the unit.

[24] Accordingly, judgment is granted in favour of the claimant as follows:

1. An Order of certiorari removing into this Honourable Court and quashing the decision of the second defendant as contained in the certificate issued on the 30th October 2013 that the Antigua and Barbuda Free Trade Union is the sole bargaining agent of the Line Staff Employees of the Applicant.
2. A Declaration that the decision to certify the Antigua and Barbuda Free Trade Union as the certified Sole Bargaining Agent of the Line Staff Employees of the claimant is wrong and ultra vires the Antigua and Barbuda Labour Code.
3. An Order of Mandamus requiring the second defendant to reconsider her decision and certify that no trade union has received the majority of the valid votes cast by the employees in the unit and therefore no union is entitled to be their sole bargaining agent.
4. Cost to the claimant in the sum \$5,000.00.


CLARE HENRY
High Court Judge
Antigua & Barbuda