

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BHP BILLITON DIAMONDS INC.

Plaintiff

-and-

PUBLIC SERVICE ALLIANCE OF CANADA, UNION OF NORTHERN WORKERS, DIAMOND WORKERS LOCAL X3050 and their members, servants, agents, and persons acting or purporting to act on their behalf; John Doe, Jane Doe, and all other persons unknown to the Plaintiff; and acting as pickets and/or attending at or near the premises of the Plaintiff; and/or intimidating, harassing, or threatening employees, agents or contractors of the Plaintiff

Defendants

MEMORANDUM OF JUDGMENT

[1] On this application for an interim injunction the Plaintiff has satisfied me that the following unlawful and tortious activities have occurred:

- (a) on April 6, 2006 (the day before the strike commenced) a BHP employee who was in favor of the strike made a threat of violence against BHP employee Laurence Kotchilea and/or Mr. Kotchilea's wife;
- (b) on April 6, 2006 (the day before the strike commenced) a BHP employee who was in favor of the strike made a threat of personal violence and a threat of damage to personal property to BHP employee Don Camsell;
- (c) on April 11, 2006 representatives of the Defendants PSAC entered and occupied the Yellowknife office premises of Procon, one of the Plaintiff's contractors. By this Defendant's own admission

(contained in a press release)the PSAC representatives were trespassing and would not leave the premises when requested by the RCMP. Procon was threatened with further occupation of their offices across Canada if they did not desist with “scab” activity;

- (d) on April 12, 2006 a group of about 10 PSAC representatives entered and occupied the office premises of Turpin Consulting Ltd. (a contractor hired by the Plaintiff) at Edmonton, Alberta and were trespassing on those premises when they did not leave when requested to do so.
- (e) on the morning of April 12, 2006 picketers on the picket line at the BBE premises at the Yellowknife airport blocked a bus from entering onto the BBE premises. The bus was carrying 9 passengers who were enroute to work at the Ekati minesite. The RCMP were called. The RCMP were unsuccessful in negotiating access for the bus to BBE premises. The bus retreated after approximately two hours. The passengers were then put in smaller vehicles and these vehicles tried to enter the BBE premises. These vehicles were blocked by the picketers as well. Eventually the passengers exited the vehicles and walked across the picket line. These employees missed their scheduled flight to Ekati minesite. They left on a later flight, approximately three hours behind schedule. There were approximately 25-30 picketers on the picket line at the time;
- (f) on April 19, April 26 and on May 3 picketers on the picket line at the BBE premises refused entry and/or blocked entry of some vehicles to the BBE premises;
- (g) on April 19, 2006 one of the picketers at the BBE premises, Heather Longstaffa PSAC representative from Saskatoon, Saskatchewan, blocked a van from entering into the BBE premises;
- (h) on April 19, 2006 at the picket line at the Rae-Edzo airport three security and investigative officers of AFI International (a company contracted by the Plaintiff to provide security and investigative services during this labour dispute) were monitoring activity at the picket line. One of the picketers made a threat of violence against the property (vehicle) of AFI;

- (i) one of the AFI personnel at the Rae-Edzo picket line on April 19, 2006 was Frank Davis. Mr. Davis is a black person who describes himself as African-Canadian. One of the picketers was Don Dudar a PSAC representative from Winnipeg, Manitoba. Mr. Dudar made a racist remark to Mr. Davis, stating that he had some bananas for him and that “you look like you could peel a couple with your feet”. Mr. Dudar made similar remarks to Mr. Davis again on April 21 and April 26;
- (j) on the morning of May 3, 2006 one of the BHP employees, Nathan Zoe, was walking across the picket line at BBE premises when he was accosted by PSAC employee Heather Longstaff who grabbed him and physically obstructed him. The physical obstruction was momentary;
- (k) on May 10, 2006 BHP employee Quinton Giuriba arrived by taxi at the BBE premises enroute to work at the Ekati minesite. Picketers would not allow the taxicab to enter onto the BBE premises. There were approximately 25 picketers on the picket line at the time. Mr. Giuriba got out of the taxi cab and when he commenced walking across the picket line he was accosted by PSAC employee Heather Longstaff who blocked his personal space. His delay in entering the BBE premises was less than one minute;
- (l) on May 12, 2006 a white mini van was exiting the BBE premises and apparently had a BHP employee as a passenger. PSAC employee Heather Longstaff blocked the van’s progress, on a public street adjacent to BBE premises. The blocking of the van’s progress continued for several minutes;
- (m) on May 17, 2006 there were 4 picketers at a picket line at the Canadian North counter at the Edmonton Airport. Brian Cooper is an employee of one of BHP’s contractors and was there to board a BHP charter flight to the Ekati minesite. One of the picketers accosted Mr. Cooper and during a verbal exchange the picketer said to Mr. Cooper “I’m going to smash your fucking face in”. (This threat of violence is hearsay evidence, as it comes not directly from Mr. Cooper but rather from security superintendent Ray Halwas to whom Mr. Cooper related the incident.

The Defendants made no reference or objection to this evidence in their affidavit material in response).

[2] In addition, there are other allegations made by the Plaintiff of unlawful and tortious activity; however there is conflict between the affidavits submitted by the two sides as to the facts, and the Court is unable to resolve these conflicts on the affidavits alone. For example, Marie Merrall, the manager of the bus company providing the bus service to BHP referred to in paragraph 1(e) above, deposed that on April 11 she was visited at her Yellowknife office by three people including Todd Parsons, the President of the Defendant UNW. Ms. Merrall deposes that she was told that if the bus company did not stop providing services to BHP, they would picket on the bus company's property and not let any buses off the premises, including school buses and city transit buses. In Mr. Parsons' affidavit, he deposes that he did not threaten to block any buses, only that they would set up a picket line on the road outside the bus company premises.

[3] For the record, I will note here that, notwithstanding the incidents of unlawful and tortious activity that I have found on the evidence before the Court, the Plaintiff by its own evidence, continues with its mining operations at the Ekati minesite.

[4] BHP's legal counsel wrote letters to PSAC, on, *inter alia*, April 12, April 18 and April 28. In these letters BHP's legal counsel refers to some of the incidents iterated above and requested that PSAC and its legal counsel advise its members not to engage in unlawful conduct in connection with their lawful picketing activity. In written responses, PSAC stated that PSAC and UNW do not condone, encourage or authorize unlawful activity by their striking members, their officers, staff or supporters, and have not done so.

[5] The present Court application was filed on May 11. The motion was initially returnable May 19 but was adjourned at the Defendant's request and eventually scheduled for June 6, 2006 for argument.

[6] The interim injunction being sought by the Plaintiff on this application does not seek to restrain lawful picketing but rather unlawful conduct. Again, I note that the Defendants repeatedly state that they do not condone unlawful activity in connection with a lawful strike.

[7] There is no issue about the Defendants' or the picketers freedom of expression or of their right to form a picket line in exercise of their freedom of expression.

“Picketing is a crucial form of collective action in the arena of labour relations. A picket line is designed to publicize the labour dispute in which the striking workers are embroiled and to mount a show of solidarity of the workers to their goal. It is an essential component of a labour relations regime founded on the right to bargain collectively and to take collective action. It represents a highly important and now constitutionally recognized form of expression in all contemporary labour disputes. All of that is beyond dispute” per Dickson C.J.C. in *B.C.G.E.U. v. Attorney General of B.C.* [1988] 2 S.C.R. 214.

[8] The use of unlawful acts by employees and supporters engaged in a lawful strike and lawful picketing was discussed by Laycroft C.J.A. in *Pacific Western Airlines Ltd. v. U.A.W.* [1986] A.J. No. 19:

A strike is a blunt instrument in labour relations. By the very nature of the process, the purpose of each side is to subject the other to such economic harm and hardship that it will be forced to submit. To inflict this economic damage, employees are entitled to picket in order to induce other persons not to work for or do business with the employer so long as they use no unlawful means. Coercion or intimidation is tortious and wrongful; persuasion even in dramatic terms is not. It is often a difficult problem where a few unlawful incidents have occurred during the course of picketing, which is otherwise peaceful, to determine what portion of the economic harm has been done by the lawful picketing and which portion may be attributed to the unlawful acts.

Counsel for the Unions posed for the Court a “dilemma” which, he said, exists in labour cases when unlawful acts have been part of the picketing process in a lawful strike, but the employer does not prove irreparable damage arising out of them. In my view the Courts have never had difficulty in resolving that “dilemma”. A great mass of precedent establishes that unlawful acts by picketers will be enjoined whether or not irreparable harm is established. Moreover, where it is shown that certain activities have led to the commission of the unlawful acts, those activities will be so controlled as to prevent further similar problems, while leaving each side in the dispute free to pursue legitimate goals by legitimate means. It is hardly necessary to cite the many cases in which this control has been exercised without reference to the existence of irreparable harm.

[9] I have considered carefully the submissions of Counsel on this application. I have reviewed relevant case law, including

*Urban Parcel Services Ltd. v. CUPW*  
(1991) 107 N.S.R. (2d) 63;

*RJR-MacDonald Inc. v. Canada*  
[1994] 1 S.C.R. 311;

*Blue Tree Hotels v. Hotel Employees Union*  
(July 17, 2000) SCBC No. S003828;

*Pepsi-Cola v. R.W.D.S.U. Local 558*  
(2002) 208 D.L.R. (4<sup>th</sup>) 385; and

the *B.C. Courts* case and *Pacific Western Airlines* cases previously mentioned. I am satisfied that the evidence before the Court meets the legal requirements for the granting of an interim injunction against the Defendants named in the style of cause.

[10] A series of unlawful activities has been proven. The balance of convenience, and the public interest, requires the issuance of a Court Order enjoining unlawful activity in order to uphold the rule of law and to provide for a safe community, rather than to acquiesce in a continuation of unlawful activity.

[11] Before turning to the form of Order to be issued, I wish to briefly make reference to racist remarks made by PSAC employee Don Dudar on April 19, April 21, and April 26 at the Rae-Edzo airport. It has been proven to the Court that Mr. Dudar stated directly to Frank Davis, a black person and an employee of the security company hired by BHP, a pointedly racist remark. There is no evidence that Mr. Dudar did not make these remarks to Mr. Davis. The Defendants in some of their affidavit material in response to this application seem to be stating that this kind of remark was other than offensive to black people and to Mr. Davis. I find that the attempt to characterize the banana remark as other than offensive and racist is itself offensive and is unbecoming any member of the trade union movement.

[12] From the evidence, including the videotape evidence, it appears that at times there were 25-40 picketers, or more, on the picket line at the BBE premises and that, in

part, the sheer number of picketers resulted in the blocking of vehicle access to and egress from those premises, and of the adjacent public roads. In all of the circumstances I find it is reasonable that the Court Order place some restriction on the number of picketers on that particular picket line at the same time.

[13] There is no evidence before the Court of any large number of picketers, or of any related blocking of access, at any other site or venue.

[14] For these reasons an Order will issue as follows:

“It is ordered as follows:

1. The Defendants, by themselves, their officers, members, servants, agents, representatives, and anyone having knowledge of this Order, are restrained, enjoined and prohibited from:
  - (a) Physically obstructing, or in any way interfering with any person seeking peaceful travel to and from the Plaintiff’s place of business at the Ekati mine site, at any airport, bus station, staging area or otherwise;
  - (b) Blocking the approaches or physically impeding or delaying the passage of any person to the entrance and from the exit of the Plaintiff’s place of business at 4920 52<sup>nd</sup> Street, in the City of Yellowknife;
  - (c) Interfering with the business, contractual or economic relationships between the Plaintiff and its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff;
  - (d) Threatening, harassing, intimidating, assaulting, obstructing, or interfering with the Plaintiff’s employees, management staff, agents, contractors or suppliers or others in privity of contract with the Plaintiff, or their families;

- (e) Conspiring to use unlawful means against the Plaintiff and its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff, or their families; and
  - (f) Ordering, aiding, abetting, counselling or encouraging in any manner whatsoever, either directly or indirectly, any person to commit the acts above mentioned or any of them.
2. The number of picketers, leafletters, or other persons supporting the PUBLIC SERVICE ALLIANCE OF CANADA and the UNION OF NORTHERN WORKERS, DIAMOND WORKERS LOCAL X3050 in this labour dispute shall not exceed twelve at Braden Burry Expediting premises in the City of Yellowknife.
3. Service of this Order or any other Order this Court may see fit to make, be made on the Defendants by:
- (a) Delivering a copy of the Order to the offices of the Defendant Union of Northern Workers located at Suite 200, 5112 - 52<sup>nd</sup> Street, Yellowknife, NT;
  - (b) Delivering a copy of the Order to the office of Defendant Public Service Alliance of Canada (“PSAC”) located at 4916 - 49<sup>th</sup> Street, Yellowknife, NT;
  - (c) Delivering a copy of the Order to the office of counsel for the Defendant PSAC, by facsimile or electronic means;
  - (d) Delivering a copy of the Order to a member or members of the Defendant unions, or any person, picketing at or near any airport, bus station, staging area, or at 4920 52<sup>nd</sup> Street in the City of Yellowknife.
4. Leave to give short notice of any other application for a further injunction or a variation of this Order by the Plaintiff is hereby granted subject to service on the Defendants’ solicitors 2 days prior to the returnable hour of the application.



5. Costs of this application shall be in the cause.”

[15] While this memorandum was being typed by my assistant, the Plaintiff filed on June 7, 2006 two additional affidavits - those of Patricia Morland and Les de Pencier. For the record, I have not considered these two affidavits in reaching this decision on the plaintiff's application.

J.E. Richard,  
J.S.C.

Heard at Yellowknife, NT  
the 6<sup>th</sup> day of June, 2006.

Counsel for the Plaintiff: Cynthia J. Levy  
David Wotherspoon

Counsel for the Defendants: Jennifer Duncan