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Farm workers have no right to unionize, top court rules

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Supreme Court upholds Ontario law that restricts right of farm workers to bargain collectively

The Supreme Court of Canada dealt a harsh blow to the union movement today, ruling in favour of an Ontario law that restricts the right of farm workers to bargain collectively.

The Court said that the constitutional right to free association guarantees that "meaningful" negotiations take place between workers and their employers - but it is not intended to police the mechanics of how those negotiations take place.

"What is protected is associational activity, not a particular process or result," the majority said. "The Ontario legislature is not required to provide a particular form of collective bargaining rights to agricultural workers, in order to secure the effective exercise of their associational rights."

The case was seen as a key test of the constitutional right to free association, a section of the Charter of Rights that has evolved less than many others.

The plaintiffs - farm workers and a major union - had complained that an Ontario law that allowed them to form employee associations but prohibited them from forming unions, violated S. 2(d) of the Charter of Rights and Freedoms.

Writing for five judges in the 8-1 majority, Chief Justice Beverley McLachlin and Mr. Justice Louis LeBel said that the Charter guarantees only the right to good faith negotiations.

"Good faith negotiation under s. 2(d) requires the parties to meet and engage in meaningful dialogue," they said. "It does not impose a particular process; it does not require the parties to conclude an agreement or accept any particular terms; it does not guarantee a legislated dispute resolution mechanism in the case of an impasse; and it protects only the right to a general process of collective bargaining, not to a particular model of labour relations, nor to a specific bargaining method."

Agriculture has long been a sore point with the labour movement. They have been critical of successive governments for sympathizing with arguments from employers that their operations are uniquely vulnerable to the effects of collective action.

They contend that family farms cannot withstand the ill effects of strikes or other work action, and that the short planting and harvesting seasons can be easily devastated by a work stoppage.

"Fraser is an important case because it confirms that there is no one vision of labour relations that has to be followed in this country," said Brad Elberg, who represented the Mounted Police Members' Legal Fund in the case.

"In particular, we do not have to have workplaces where a traditional union is pitted in an adversarial relationship with an employer," Mr. Elberg said.

"Different workplaces can have different consultative structures. The important thing is that employees have an ability to come together in some form, communicate their positions to employers, and engage in meaningful discussion about the workplace."

Mr. Elberg said that the Supreme Court wisely refused to allow organized labour to use the Charter "to impose on government its vision of the ideal model of collective bargaining."

Allan Hutchinson, a law professor at York University's Osgoode Hall Law School, said that the Court has proved unwilling to apply the very rights it created through previous judgments. He said that today's decision "squandered the debatable promise" of those judgments.

"What good is a recognition of rights if the least advantaged and most disenfranchised in society - agricultural workers - cannot access them," Prof. Hutchinson asked.

The mushroom workers case provided the labour movement with a worst-case scenario it hoped could lead to a constitutional breakthrough.

Workers at the plant - which has been sold since the dispute began - alleged that they were kept in a state of fright and intimidation, warned repeatedly that attempting to organize a union would cost them their jobs.

Pitting a group of immigrant workers who worked gruelling hours in conditions they described as horrendous and humiliating, the case revolved around a Rol-Land Farms facility near Windsor, Ont. Workers alleged that it was dark, mouldy and cockroach-infested.

About 300 workers, who had immigrated from countries such as Cambodia and Sudan, harvested the crop, were referred to by numbers and banned from speaking any language but English.

Notwithstanding the dire warnings against unionizing, a majority of the workers nonetheless voted to join the United Food and Commercial Workers Canada in 2003. However, they were unable to make any headway in bargain with their employer for a contract.

The majority said that it was premature for the litigants to mount a challenge of fresh legislation in an attempt to prod the Court into expanding its recent rulings on the same issue.

"The seriousness of overturning recent precedents of this Court, representing the considered views of firm majorities, cannot be overstated," Chief Justice McLachlin and Judge LeBel said.

Two other judges in the majority - Madam Justice Louise Charron and Mr. Justice Marshal Rothstein, went further, denouncing a previous Supreme Court ruling that effectively created a constitutional right to collective bargaining.

"Section 2(d) protects the liberty of individuals to associate and engage in associational activities," they said.

"It protects the freedom of workers to come together, to form a bargaining position and to present a common and united front to their employers. It does not protect a right to collective bargaining nor does it impose duties on others, such as the duty to bargain in good faith on employers."

To the extent that a recent court ruling constitutionalized collective bargaining, they said, "it was not correctly decided. It should be overturned thus disposing of the constitutional challenge in this case."

However, in a sharp dissent, Madam Justice Rosalie Abella said that the Ontario law was decidedly unresponsive to the need to extend collective bargaining rights to agricultural workers.

"Preventing all agricultural workers from access to a process of collective bargaining in order to protect family farms, no matter their size or nature of the agricultural enterprise, harms the s. 2(d) right in its entirety, not minimally," Judge Abella said.

"It is worth noting too that all provinces except Alberta give agricultural workers the same collective bargaining rights as other employees," she added. "There is no evidence that this has harmed the economic viability of farming in those provinces, or that the nature of farming in Ontario uniquely justifies a severely restrictive rights approach."

The challenge was launched by three Ontario factory farm workers, the United Food and Commercial Workers Canada union and its national director, Michael J. Fraser.

Their legal challenge took on a historic exclusion of agricultural workers from the Ontario Labour Relations Act.

In a landmark 2007 decision involving B.C. health care workers, the Court affirmed protections to the right to collective bargaining. Coming from a Court that was seen as conservative and wary of extending Charter rights, the decision surprised and delighted the union movement.

UFCW elected to pursue the mushroom workers case. Beyond enhancing the rights of the workers involved, they hoped for a ruling that could prevent governments moving in to force striking workers back to their jobs.

Ontario agricultural workers were given the right to unionize in 1994, but the law was quickly repealed by the Mike Harris government a year later.

In 2001, however, the Supreme Court restored the right of agricultural workers to join a union or employee association. In the case of Dunmore v. Ontario, it said that the law violated the Charter by excluding agricultural workers from the Ontario Labour Relations Act.

The Supreme Court instructed the province to change its labour laws to comply with the ruling.

The result was the Agricultural Employees Protection Act. It allowed Ontario farm workers to form associations, but not unions. It asserted that employers have no obligation to negotiate with them, effectively denying agricultural workers the right to collectively bargain.

In challenging that law, the UFCW won an initial victory in the Ontario Court of Appeal. It ruled that agricultural workers enjoy the same labour relations protections as other workers in the province. However, the ruling did not go so far as to grant agricultural workers the right to strike.