The Top Five 2011

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

Ontario (Attorney General) v. Fraser, 2011 SCC 20, [2011] 2 S.C.R. 3

http://csc.lexum.org/en/2011/2011scc20/2011scc20.html

In this case, the Supreme Court of Canada (SCC) ruled that the limited rights of agricultural workers to collective bargaining do not violate their right to freedom of association under the Canadian Charter of Rights and Freedoms.

Date released: April 29, 2011

Ruling

The *Agricultural Employees' Protection Act* (*AEPA*) contains not only the right of employees to bargain collectively with their employer, but also contains an implied obligation on the part of employers to bargain in good faith. It does not guarantee a particular form of collective bargaining rights, nor that an agreement will be reached. It simply protects the right of employees to associate in order to advance collective objectives.

Facts

In Ontario, most work is governed by the *Labour Relations Act* (*LRA*). Farm workers, however, have been excluded from this legislation since 1943. In 2001, the Supreme Court of Canada (SCC) found that this violated their constitutional right to freedom of association as guaranteed by s. 2(d) of the *Canadian Charter of Rights and Freedoms*. In response to that decision, the Ontario government at the time passed a new law, the *AEPA*.

This new law still excluded farm workers from the normal labour protections in Ontario, and granted them lesser rights. The *AEPA* granted rights to agricultural workers in dealing with their employers, such as enabling them to work together with other employees to obtain more favourable wages and working conditions. However, it did not impose any duty on employers to bargain in good faith with employees. In other words, while it granted employees the right to form working associations, in practice, these associations would have far less power than those formed under the *LRA*. Mr. Fraser challenged these new protections as not going far enough to protect agricultural workers and violating s. 2(d) of the *Charter*.

In the current case, the United Food and Commercial Workers Union (UFCW) sought to represent a number of agricultural workers collectively in bargaining with two separate employers. One employer permitted brief presentations from the union, while the other refused to recognize the union as the employees' representative. These developments led UFCW, with Mr. Fraser, to challenge the constitutional validity of the *AEPA*. The SCC was asked to address whether the *AEPA* respects constitutional rights, and also to clarify what protection s. 2(d) offers.

Decision

Section 2(d) of the *Charter* protects the right to associate to achieve collective goals. Laws that restrict or make it impossible to achieve workplace goals through collective actions interfere with freedom of association. However, the constitutional right to freedom of association does not guarantee a particular *type* of bargaining; nor does it guarantee a particular outcome or agreement arising from an association intended to achieve collective goals. What is protected is associational activity, not a particular process or result. Therefore, legislatures are not constitutionally required, in all cases and for all industries, to enact laws that set up a uniform model of labour relations. The SCC ruled that the *AEPA* provides a process that satisfies the s. 2(d) constitutional requirement.

Association to achieve collective goals requires both employers and employees to meet and to bargain in good faith, in the pursuit of a common goal of peaceful and productive accommodation. Bargaining activities protected by s. 2(d) in the labour relations context include good faith bargaining on important work place issues. Therefore, the SCC held that even though "good faith" is not specifically written into the *AEPA*, it nevertheless contains the implied requirement that employers bargain in good faith. Agricultural employers must consider employee representations in good faith, listen and consider the submissions with an open mind, and engage in meaningful dialogue with the employees. The provision in the *AEPA* that sets out the right of employees' associations to make representations to their employers must have been intended by the lawmakers to be a meaningful right.

Discussion

1. What are labour unions? What is their purpose? Why might they be a problem from the perspective of employers?

2. What does 'good faith' mean? What would be the result of negotiations between employers and employees that are not conducted in good faith?

3. Should a constitutional right given to a person or group of people impose obligations on *other* people, for example the employers? Should employers have to bargain in good faith?

4. The *AEPA* does not give farm workers the right to strike that many other workers in Ontario have. What other means could they use to ensure that employers bargain in good faith, which the SCC decision here suggests they must do?