

847783

DECISION IN THE MATTER OF AN ARBITRATION

In the matter of a grievance (Policy, N00-07-00016) [845740] between

CANADA POST CORPORATION

And

CANADIAN UNION OF POSTAL WORKERS

For the Employer Mtre. André C. Giroux

For the Union Mtre. Robert Drury

ARBITRATION
DECISION NUMBER
2008-11 B
NUMERO
SENTENCE ARBITRALE

Translation/Traduction
"Internal use only"
"Usage interne seulement"

Grievance and Petition for an Interim Order

On 19 November 2008, the Union sent the Employer and the instant Arbitrator grievance N00-07-00016 accompanied by a petition for an interim order worded as follows.

[translation]

PRESENTATION OF THE FACTS

The Canadian Union of Postal Workers contests Canada Post Corporation's policy of prohibiting employees in the bargaining unit from wearing a button or other insignia during working hours designed to promote maintenance of the public character of postal service in Canada. CUPW is contests the Corporation's policy of imposing disciplinary measures on employees who refuse to obey the directive or order to remove such buttons or insignia.

The Corporation's policy and conduct

- a) *Illegally infringe on the employees' and the Union's freedom of expression;*
- b) *Constitute an obstacle to a legitimate Union activity;*
- c) *Constitute an abuse of rights by the Corporation;*
- d) *Violate the provisions of the collective agreement, specifically articles 1, 2, 3 and 5.*

In particular, the Corporation is abusing rights by using the threat of disciplinary action to violate freedom of expression, given that various arbitrators have ruled over the years that the wearing of this type of button or insignia was legitimate and that the Corporation had no right to prohibit this much less impose disciplinary measures on employees who whose to express themselves in this manner. Specifically, the Corporation is deliberately violating the order issued by Arbitrator Rodrigue Blouin in his decision of 27 September 2006.

CORRECTIVE ACTION REQUESTED

Interim order

There is an urgent need for issue of an interim order under the terms of clauses 9.87 ff of the collective agreement given that:

- a) Freedom of expression is a fundamental right protected by the Canadian Charter of Rights and Freedoms and by common law, and such a flagrant violation as in the instant case automatically constitutes an emergency situation;*
- b) The threat of a disciplinary measure being imposed with the consequences this may entail for the employee and his family constitutes a serious negation of freedom of expression that justifies emergency intervention by the Arbitrator;*
- c) The prohibition on employees wearing a button or insignia to promote maintenance of the public character of postal service threatens to irrevocably compromise the legitimate campaign conducted by CUPW for maintenance of the public character of postal service and against privatization or deregulation of postal service;*
- d) The issue of total or partial privatization of postal service as well as the deregulation of this service are currently timely topics of the greatest importance for the employees and CUPW;*
- e) Without an interim order it will be impossible ultimately to remedy the serious infringement of freedom of expression currently suffered by the employees and the Union at the hands of the Corporation.*

CONSEQUENTLY

CUPW requests that through an interim order issued under the terms of clauses 9.87 ff of the collective agreement, the Corporation and its representatives be ordered:

- a) To cease prohibiting employees in the bargaining unit from wearing a button or other insignia supporting the public character of postal service or disapproving its privatization or deregulation;*
- b) To cease imposing disciplinary measures on employees who wear such buttons or insignia and to cease any other form of reprisals or harassment against employees.*

CORRECTIVE ACTION REQUESTED BY FINAL DECISION

CUPW also requests that by final decision, the Arbitrator:

- a) Rule that the Corporation infringed the freedom of expression of the employees and the Union;*
- b) Rule that the Corporation committed abuse of rights by deliberately violating the arbitration awards rendered between the parties in respect of the wearing of buttons and insignia;*

- c) *Rule that the Corporation violated the provisions of the collective agreement;*
- d) *Order the Corporation to cease prohibiting employees in the bargaining unit from wearing a button or insignia supporting the public character of postal service or disapproving its privatization or deregulation;*
- e) *Order the Corporation to cease imposing disciplinary measures on employees who wear such buttons or insignia and to cease any other form of reprisals or harassment against the employees;*
- f) *Instruct the Corporation to compensate any employee whose freedom of expression was violated by the policy or actions of the Corporation or its representatives.*

CUPW reserves the right to request any additional corrective action.

This grievance was signed by Philippe Arbour, National Director, Grievances.

In the letter he sent me that same day, Mr. Arbour asked me [translation] "to hear the parties upon expiry of the five-day time limit stipulated in clause 9.91 of the collective agreement."

A hearing was held in Montreal on 3 December 2008 on the petition for an interim order.

Evidence

The Union entered into the record an affidavit taken out by Mr. Arbour on 2 December 2008. Following are the most relevant excerpts.

[translation]

Paragraph 5: The Canadian Union of Postal Workers has a policy that postal service in Canada must remain a public and universal service and CUPW is opposed to any deregulation of postal service in Canada.

Paragraph 6: On various occasions over the years, CUPW and its members have conducted campaigns with governments and Canadian public in general to ensure maintenance of the public and universal character of postal service in Canada.

Paragraph 8: In October 2007, Bill C-41 entitled An Act to Amend the Canada Post Corporation Act was tabled for first reading in the House of Commons. The purpose of that bill was to terminate Canada Post Corporation's exclusive privileges in respect of letters addressed abroad. That could jeopardize a large number of jobs covered by the collective agreement...

Paragraph 9: On or about 21 April 2008, the government announced that a strategic review of Canada Post would be conducted by a committee of three people. This committee is chaired by Robert Campbell who has previously spoken in favour of deregulation of Canada's postal system. This strategic review was in fact conducted and the committee must table its report sometime in December 2008...

Paragraph 10: *Concerned by the tabling of Bill C-14 in 2007 and by the announcement of the strategic review of Canada Post, CUPW decided to resume its campaign with the Government of Canada and the public to promote the public and universal character of postal service in Canada.*

Paragraph 11: *CUPW invited its members to participate on a voluntary basis in this awareness campaign by wearing a button...*

Paragraph 13: *In several locations in the country, Canada Post Corporation representatives have, subject to disciplinary measures, prohibited employees in contact with the public from wearing the button during working hours or when traveling while wearing the Corporation's uniform.*

Paragraph 19: *In addition to wearing of the button described above [R-3], CUPW also invited all its members to participate in a national awareness day... by wearing a sticker or a button...*

Paragraph 23: *The wearing of buttons constitutes for CUPW and its members a reasonable means of expressing their legitimate opinion, which also is not causing prejudice to anyone.*

Paragraph 24: *By prohibiting employees from wearing buttons..., the Corporation is violating the freedom of expression of its employees and CUPW.*

Paragraph 25: *Without the requested interim order, CUPW and its members will suffer a serious infringement of their fundamental right of free expression and no adequate corrective action will be able to remedy that...*

The following page contains copies of the two buttons in question. It should be noted that the most recent ([translation] "Peace...") has also been distributed in sticker form.

(In the grievance cited above, and in the petition for an order and in Mr. Arbour's affidavit, reference is made to a decision dated 27 September 2006 by Arbitrator Rodrigue Blouin, particularly an order on wearing the first button ([translation] "Your postal service..."). Counsel for the Employer objected to this evidence, as well as deposition of this decision, even as case law, given the terms of clause 9.70 of the collective agreement which stipulates that in cases of regular arbitration, such as that referred to Arbitrator Blouin, [translation] "the decision of the arbitrator's shall not constitute a precedent and shall not be referred to in subsequent arbitrations. Clause 9.103 shall not apply to such decision." The Union cut short the debate by withdrawing this decision and all related allegations, both in the grievance and in the affidavit.)

[translation] [photocopies of two buttons]

*Your **public** postal service delivers the goods... for now CUPW*

*Peace, Joy and a universal **public** postal service CUPW*

Once this affidavit by Mr. Arbour and the attached documents were produced, the Union declared its evidence closed.

In turn, the Employer produced an affidavit by Sylvain Bordeleau, Manager, Labour Relations. Once again, I will reprint only the passages a deemed relevant.

[translation]

Paragraph 4: *On 8 October 2008, the Corporation sent a message to all employees informing them that in its opinion, wearing the button could prejudice the Corporation's business, particularly with the approach of the busiest time of year.*

Paragraph 5: *On 8 October 2008, around 4:45 pm, I contacted Cindy Foreman of the Union's national office to inform her that the Corporation did not intend to tolerate wearing of the button requested by the Union when Union members were wearing the Corporation's uniform in public.*

Paragraph 8: *The Corporation's actions comply in all points with the formal arbitration award rendered by Arbitrator I. Christie on 9 December 1993 (CUPW grievance no. R01-37-00005)...*

Paragraph 9: *Although the parties have renewed the collective agreement several times since Arbitrator Christie rendered this award, none of the changes made to the collective agreement have altered the scope of that award.*

Paragraph 10: *Pursuant to clause 9.103 of the collective agreement, the parties therefore are bound by Arbitrator Christie's interpretation.*

Paragraph 16: *The purpose of wearing the button as requested by the Union is in no way linked to the collective bargaining process between the Union and the Corporation.*

Paragraph 17: *The Corporation provides certain members of the Union a uniform that they must wear when working.*

Paragraph 23: *The buttons the Corporation has prohibited from being worn would have a damaging effect for the Corporation because they risk creating uncertainty among customers about the Corporation's ability to deliver the mail entrusted to it.*

Paragraph 24: *The Corporation has not acted unreasonably or arbitrarily in prohibiting wearing of the button advocated by the Union since it provides a uniform to its employees to which it attaches great importance due to the image the uniform projects.*

The evidence was completed by brief testimony by Mr. Bordeleau.

Among the documents produced by the Union is an e-mail sent to managers in the Pacific region, paragraph 5 of which reads as follows.

An instruction (direct order) should be provided to employees who continue to refuse (to remove the button) and an emergency suspension issued if the non compliance [sic] continues.

The focus was adjusted and a decision was made that [translation] “progressive discipline” would be applied.

Once the evidence was declared closed by both parties, I asked the Union to specify the scope of its request, given the ambiguity created by use of the words [translation] “buttons” and/or “insignia” in both the body of the grievance and in the wording of the petition for an order. The reply I obtained was that the corrective action requested covered only the buttons (or stickers) reprinted above.

Union’s position

Referring to Arbitrator Christie’s decision which apparently is the cornerstone of the Employer’s position, the Union drew the Arbitrator’s attention to the two following passages.

Paragraph 10: In the course of the hearings counsel for the Union advised me formally that the Union was not pursuing any claim that the employer had acted in breach of the Canadian Charter of Rights and Freedoms, so I shall say no more about that.

Paragraph 75(5): Where the message conveyed by the Union button is not directly related to the collective bargaining process all that is required is that the Employer does not act unreasonably, unless some statutory or Collective Agreement right other than those with which I am concerned here is involved. As I said at the outset, in my view it is not unreasonable for an employer who is providing a uniform, quite evidently because of the business importance it attaches to image, to require that the uniform be unadorned, except in accordance with its direction or permission.

[emphasis added]

We will return later to this decision by Arbitrator Christie, specifically in light of certain subsequent decisions by the Supreme Court.

There is an appearance here of a right under the terms of the provisions of the *Canadian Charter of Rights and Freedoms* (RSC 1985, Div. II, No. 44, Appendix B, Part I):

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

...

b) freedom of thought, belief, opinion and expression...

32. (1) This Charter applies

a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament...

Based on the *Canada Post Corporation Act* (RSC 1985, c. C-10), the Employer is subject to application of the Charter, given the terms of section 23 of its founding act:

The Corporation is, for the purposes of this Act, an agent of Her Majesty in right of Canada.

Agents of the Crown are subject to the Charter, as the courts have ruled:

- *Multani v. Commission scolaire Marguerite-Bourgeoys* (2006) 1 SCR 256:

Paragraph 22: There is no question that the Canadian Charter applies to the decision of the council of commissioners, despite the decision's individual nature. The council is a creature of statute and derives all its powers from statute. Since the legislature cannot pass a statute that infringes the Canadian Charter, it cannot, through enabling legislation, do the same thing by delegating a power to act to an administrative decision maker.

The same applies to the Employer.

- *Canadian Union of Postal Workers v. Canada Post Corporation* (1987) 40 DLR (4th) 67:

Page 71: Having regard to the expressed concern, on a national basis, to the security of the mails and the public right and interest in a dependable and efficient mail service, I am of the view that CPC is acting "Governmentally" in its formulation and promulgation of the subject rules, and I find that the Canadian Charter of Rights and Freedoms does have application.

- *Rural Dignity of Canada and Canada Post Corporation*, 78 DLR (4th) 211:

Page 224: The jurisprudence has established that the Corporation, being an agent of Her Majesty the Queen in right of Canada, being subject to the direction of the appropriate Cabinet Minister, being an institution of the Government of Canada an [sic] informing the work which had for over 100 years been performed by a department of the Government of Canada is a part of the executive or administrative function of the Government of Canada and is subject to the Charter at least in respect of some of its activities.

- *Lebrun v. Syndicat des postiers du Canada*, DTE 94T-842:

[translation]

Page 23: Section 23 of the Canada Post Corporation Act, RSC 1985, c. C-10, designates the Corporation as an agent of the Crown; in this capacity, it is a government institution to which the Charter applies pursuant to section 32 of the Charter. Consequently, all activities of the Corporation of whatever nature are government activities subject to the Charter.

On the matter of the concept of freedom of expression protected by section 2 of the Charter, counsel for the Union submitted the Supreme Court decision in *Retail, Wholesale and Department Store Union, Local 580 v. Dolphin Delivery Ltd.* (1986) 2 SCR 573:

Freedom of expression is not, however, a creature of the Charter. It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society. Representative

democracy, as we know it today, which is in great part the product of free expression and discussion of varying ideas, depends upon its maintenance and protection.

In this instance, this freedom of expression is exercised for a legitimate purpose, maintaining the integrity of postal services. Whether rightly or wrongly, the Union believes that the planned deregulation risks leading to the loss of jobs.

Mtre. Drury insisted on the public character of the message conveyed by the buttons, which use neutral terms that contain no accusation against the Employer. On this point, see *Richard Quan v. Canada* (1990) 2 FC 191.

Prior to Arbitrator Christie's decision, there had been the decision by Arbitrator Outhouse in the case involving the same parties, dated 2 September 1986, 26 LAC (3d) 58.

Page 64: Having considered the evidence and the submissions of the parties, I have reached the conclusion that the grievance should succeed. It is common ground that the wearing of the button was a lawful union activity. The button itself was not derogatory, provocative or obscene. Neither was it overtly critical of the employer or government. Consequently the wearing of the button by grievor [sic] did not pose any serious risk of harm to the employer, either in terms of customer relations or otherwise. That being the case, I find that the balance of competing interests in this case favours the union rather than the employer.

Page 67: In my opinion, the foregoing cases are quite easily reconcilable and have a common underlying theme. Stated quite simply, it is that an employer must be able to show some overriding interest in order to justify restricting an employee's freedom of expression, particularly when the employee seeks to exercise that freedom in the pursuit of lawful union activity.

...In these circumstances, I find that the wearing of the button does not impinge of [sic] the employer's legitimate interests, at least not to any significant degree, and hold, therefore, that the employer breached art. 5.01 of the collective agreement and 5.110(1) of the Canada Labour Code when it ordered the grievor and his fellow wicket clerks to remove same.

There is urgency, given that the managers have received orders to prohibit the wearing of buttons and thus that Union members are faced with a choice of exercising a fundamental right or waiving that right when faced with the threat of sanctions. Furthermore, the decision on merit could not have a retroactive character.

The balance of inconvenience weighs in the Union's favour, especially given the lack of evidence of any prejudice to the Employer. There is a prejudice of rights in this instance. On this point, see the decision by Arbitrator Guy Dulude, *Canada Post Corporation and Canadian Union of Postal Workers*, policy grievance N00-92-00001, 14 September 1992:

[translation]

Page 35: Consistent with constant case law in our civil tribunals, the establishment of violations of such clear contract rights would relieve the tribunal from examining the issue of the balance of inconvenience, since the party against

whom the order is sought cannot be allowed to further perpetuate the prejudice caused to its co-contractors in flagrant violation of their rights.

Employer's position

The Employer claims that the Union's petition must be examined within the limited framework of the provisions of clauses 9.87 *ff* of the collective agreement, and particularly in light of the criteria established in clause 9.93.

The first question that arises in this context is whether there is a *prima facie* violation of the collective agreement. On this point, Mtre. Giroux pointed out that Arbitrator Outhouse's decision rendered in 1986 was considered by Arbitrator Christie in 1993.

In this context, the Arbitrator must question whether the instant situation is substantially identical to that facing Arbitrator Christie, which would open the way to application of clause 9.103:

The final decision rendered by an arbitrator binds the Corporation, the Union and the employees in all cases involving identical and/or substantially identical circumstances.

In that situation, the Arbitrator is bound by the Christie decision.

Notwithstanding the Supreme Court's ruling in the Parry Sound case (2003) 2 SCR 157, the Charter is not, like other legislation, presumed to form part of the collective agreement. In support of this view, see:

- *Bartello v. Canada Post Corporation*, 46 DLR (4th) 129, 4 December 1987:

Paragraph 35: It is my opinion that the collective agreement freely bargained by the employer and the union is a matter of contract which does not attract the guarantees of the Charter...

...In this case, as in the case of an agreement between private parties, the contract is not subject to the constraints of the Charter.

(This decision has been cited with approval in the judgment of 16 September 1991 in *Canada Post Corporation v. Canadian Union of Postal Workers*, 84 DLR (4th) 150.)

Similarly: *National Party of Canada v. Canadian Broadcasting Corporation*, 106 DLR (4th) 568.

If there is any urgency, the Union itself is the origin of this situation. In fact, as early as 8 October 2008, the Employer informed the Union that it would not tolerate wearing of the button, and the grievance challenging that decision was not filed until 19 November 2008, 40 days later. Furthermore, Bill C-14 died on the order paper, so new legislation will be required to undertake any deregulation whatsoever. On the matter of the disciplinary measures imposed or to which the employees might be exposed, these can be contested through the normal channel, the grievance procedure. Finally, there are other ways for the Union to make its views known.

On the balance of inconvenience, the words used on one of the buttons ([translation] "for now") could have a negative impact on the Employer's business, as attested by the following paragraph from Mr. Bordeleau's affidavit:

[translation]

Paragraph 21: *Such a message could create uncertainty in the minds of the Corporation's customers and lead them to do business with companies competing with the Corporation.*

Union's rebuttal

To rebut the Employer's suggestion that the Charter cannot be presumed to form part of the collective agreement, despite the Parry Sound decision, counsel for the Union referred the Arbitrator to the recent Supreme Court ruling in *Multani v. Commission scolaire Marguerite-Bourgeoys et Procureur general du Québec* (2006) 1 SCR 256:

There is no question that the Canadian Charter applies to the decision of the council of commissioners, despite the decision's individual nature. The council is a creature of statute and derives all its powers from statute. Since the legislature cannot pass a statute that infringes the Canadian Charter, it cannot, through enabling legislation, do the same thing by delegating a power to act to an administrative decision maker...

(Citing Eldridge v. British Columbia (1997) 3 SCR.264)

the *Charter* may be infringed, not by the legislation itself, but by the actions of a delegated decision-maker in applying it.

...the decision should, if there is an infringement, be subjected to the test set out in s. 1 of the Canadian Charter to ascertain whether it constitutes a reasonable limit that can be demonstrably justified in a free and democratic society. If it is not justified, the administrative body has exceeded its authority in making the contested decision.

Decision

In light of the Multani decision examined through the prism of the Parry Sound decision, I find that the Employer's decision in the instant case may be assessed under the principles entrenched by the Charter.

Arbitrator M.H. Freedman was a little ahead of his time when he wrote, in *Convention Centre Corp. and CUPE, Local 500*, 63 LAC (4th) 390:

. Page 406: The Union and its members have a legitimate, legislatively protected right to engage in lawful activity in support of interests of importance to them. This right is enshrined in the Labour Relations Act, confirmed in the Agreement... and, of course, protected by the Bill of Rights to the extent that such activities are an expression of free speech. Suffice to say for the present purpose that the right of members of the Union to express themselves on matters of importance to them is a right that is to be protected

And at page 412:

It is both unreasonable and an unwarranted restriction on free speech to prevent without any exceptions whatsoever any button, stickers or pins from being on uniforms...

[emphasis added]

It of little importance to me to determine whether clause 9.103 of the collective agreement in effect existed in the current form at the time when Arbitrator Christie rendered his decision in 1993. I find that had this been the case, he personally would have been bound by Arbitrator Outhouse's 1986 decision.

Regardless, I in turn am subject to this clause 9.103 which, however, must be interpreted very strictly. Given this, I do not believe I am seized with a case [translation] "involving identical and/or substantially identical circumstances" to those in the case before Arbitrator Christie. Furthermore, the legal context is not the same.

Here is the excerpt from the Christie decision on which the Employer based its position.

[translation]

Page 22 (of the French version): *Given the foregoing, I will now set out my position on what the collective agreement allows me to do, interpreted in light of the arbitration awards and the prior customs, which the parties are presumed to have known.*

1. *Wearing of a Union button directly related to the collective bargaining process by a unionized employee is a Union activity under the terms of article 5, the exercise of which is guaranteed by this provision of the collective agreement and by the Canada Labour Code.*
2. *The Employer may not prohibit its employees from wearing a Union button directly related to the collective bargaining process during working hours, unless it proves that this activity, the exercise of which is guaranteed to have an adverse effect on its ability to manage or on its operations.*
3. *Buttons on which the message itself is disturbing, insulting, offensive or harms the Employer's reputation are deemed to have this adverse effect.*
4. *Otherwise, when the wearing of a Union button directly related to the collective bargaining process in itself is not disturbing, insulting or offensive and does not harm the Employer's reputation, the Employer must produce certain evidence to the contrary. Under these circumstances, the Employer may prohibit them only if it proves that their adverse effect outweighs the legislative right of employees "to express their views on the subject of labour relations." This right must be given precedence.*
5. *When the message conveyed by the Union button is not directly related to the collective bargaining process, it is only incumbent on the Employer not to act in an arbitrary manner, unless a right resulting from the legislation or from the collective agreement, other than those at issue in the instant case, is involved. As I indicated at the start, I find the decision of an employer that provides a*

uniform and that clearly attaches great importance to its image, to prohibit any adornment of that uniform unless authorized by it, reasonable.

[emphasis added]

Arbitrator Christie therefore personally introduced a serious qualification by using the terms [translation] "legislative right" and "right resulting from the legislation."

In the instant case, that right is freedom of expression, entrenched by section 2 of the Charter, which is presumed to form part of the provisions of the collective agreement.

Clause 5.01 of the collective agreement entrenches the prohibition on [translation] "discrimination, interference, restriction, coercion, harassment, intimidation or disciplinary sanction... against (any) employee based on... his membership in the Union or his activity within the Union."

The wearing of a button therefore does not necessarily have to occur solely during the [translation] "collective bargaining process" for this right to be protected by this provision of the collective agreement and by section 2 of the Charter.

As stated above, the [translation] "legal context" has changed since Arbitrator Christie's decision and it follows that its subparagraph (5) above is no longer justified, since [translation] "activity within" the Union had to be assessed in the same manner, whether or not the parties were in a [translation] "collective bargaining process." In other words, regardless of the circumstances, the employees' right to freedom of expression takes precedence over the Employer's management right [translation] "in a free and democratic society," provided that right is exercised within the benchmarks set by Arbitrator Outhouse and by Arbitrator Christie himself.

We therefore have *prima facie* evidence in this instance of a violation of the collective agreement.

The situation is urgent since the Employer has a policy of imposing disciplinary measures on employees who exercise their constitutional right to wear these buttons. We are also in the presence of a legal prejudice.

The balance of inconvenience weighs in the Union's favour, since the Employer's decision is based solely on assumptions and/or possibilities, as demonstrated by Mr. Bordeleau's affidavit.

The employees cannot be allowed retroactively to wear the buttons in question, so the situation could not be corrected by any future decision on merit nor by one or more decisions on disciplinary measures.

Everything therefore weighs in favour of issuing an order under the terms of clause 9.93 of the collective agreement, for the period stipulated in clause 9.95.

Disposition

Given clauses 5.01 and 9.87 *ff* of the collective agreement;

Given the *prima facie* evidence of a violation of clause 5.01 of the collective agreement;

Given the urgency of the situation;

Whereas the balance of inconvenience argues in favour of issuing an order;

Whereas, without such an order, the consequences of the violation of the collective agreement ultimately could not be corrected or adequately compensated;

Whereas there is no other useful recourse;

The Arbitrator grants the Union's petition and issues an order instructing the Employer and its representatives to cease prohibiting employees in the bargaining unit from wearing the buttons or stickers described above, and to cease imposing disciplinary measures on employees who wear them.

This order shall remain in effect for a period of twenty (20) calendar days and shall be subject to renewal under the terms of clause 9.95 of the collective agreement.

The Arbitrator defers hearing of the grievance on merit to one of the other national arbitrators likely to hear the parties as quickly as possible.

Saint-Jean-sur-Richelieu
11 December 2008
[s]
CLAUDE LAUZON
ARBITRATOR

NB: - Disposition of the order transmitted to the parties on 5 December 2008.
- Reasons for the decision transmitted on 11 December 2008.