

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV 2011/0201

BETWEEN:

ANTIGUA TRADES AND LABOUR UNION

Claimant

AND

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendant

Appearances:

Mr. Hugh Marshall Jr. for the Claimant
Mr. Justin Simon QC, and Ms. Carla Brooks-Harris for the Defendant

2012: June 18

Ruling

[1] **Remy J.:** By Fixed date claim filed on March 29th 2011, the Claimant Antigua Trades and Labour Union, claimed against the Defendant namely the Attorney General of Antigua and Barbuda, an order that:-

1. A true account be made of all monies due to the Claimant from the Defendant in respect of Union Dues as the designated Bargaining Agent for Non-Established Workers of the Government of Antigua and Barbuda.
2. An Order that all sums found to be due and owing including all sums deducted from Non-Establish Workers and not paid, be paid forthwith to the Claimant.
3. Interest on all sums found due and owing and not paid at the rate of 10% per annum from the date of deduction.
4. Costs of these proceedings.

[2] The Claim was stated as being filed pursuant to and under the Section 13 of the Crown Proceedings Act for the Acts and or omissions of various accounting Officers of various Government Departments including the Permanent Secretary in the Ministry of Finance and the Accountant General.

[3] By Application dated the 29th March 2011, the Applicant/Claimant applied for an order that directions be given to the Respondent/Defendant, The Attorney General of Antigua and Barbuda as the appropriate Officer under the Crown Proceedings Act of the Officers in the Ministry of Finance and other related Government Departments to: -

- a) Render a true account of all monies that have been deducted from the salaries and wages of Non-Established Workers with the Government of Antigua and Barbuda, as negotiation fees and union dues are not paid to the Claimant as required by Law.
- b) Render a true account of all monies that the Government Departments have failed to deduct and submit to the Claimant as required to do as Union Negotiation Fees in accordance with Law.
- c) Provisions to be made for the cost of the Application.

[4] The grounds of the application were stated as: -

- a) Civil Procedure Rules 2000 Part 41.2;
- b) Antigua and Barbuda Labour (Amendment) Act No.7 of 2007.
- c) The Officers of the Government have failed to pay or caused to be paid any negotiation fees or union dues as deducted from the Claimant's Members who are Non-Established Workers.
- d) The actions of the Defendant Officers in the ministry of Finance and or various Government departments, charged with the responsibility of making the statutory deductions is unlawful.
- e) Just and Equitable.

[5] The Application was supported by an Affidavit in Support deposed to by Mr. Alrick Daniel, (Mr. Daniel) the "duly elected and appointed General Secretary of the Applicant/Claimant, namely the Antigua and Barbuda Trades and Labour Union."

[6] In this Affidavit, Mr. Daniel deposed, inter alia that: -

- a) The Applicant is a Registered Bargaining Agent within the meaning of the Antigua and Barbuda Labour Code. In or about January 1960, the Claimant Organization became the Collective Bargaining Agent for and on behalf of all Non-Established Workers with the Government of Antigua and Barbuda. A true copy of the most recent Collective Agreement is attached hereto as "AD.1"
- b) By reason of Section J13 (1) & (2) of the Antigua and Barbuda Labour Code, Cap 27 of the Laws of Antigua and Barbuda, the Claimant was entitled to negotiation fees up to the implementation of an amendment to that Section, which amendment took effect 8th October, 2007.
- c) Under the Old Law, the Claimant was entitled to \$50.00 per Employee, per year and under the new Law, the Claimant is entitled to dues and fees of \$ 5.00 per week, per Employee.

[7] Mr. Daniel further deposed that "since the implementation of the New Law or rather since the amendment," the Claimant has received several payments. He states in paragraphs 6 and 7 of the Affidavit that: -

Paragraph 6 - "Each of these payments should represent \$ 5.00 per worker. That is \$ 5.00 negotiation fee for each Employee that is not a Member of the Union. As well as \$ 5.00 dues for each Employee that is a Member of the Union."

Paragraph 7 - "However, the exact number of workers that are employed within the Government are not known to the Claimant. Only the Government has that exact information. I have previously requested orally from the Treasury Department this information and though it has been promised it has never been given. I have requested this information in writing also. A true copy of which I exhibit as "AD.2" but this too has gone unanswered."

[8] Mr. Daniel states that the Claimant "does not have the exact number and therefore cannot attest to the accuracy of the payment given."

[9] Mr. Daniel states that: -

"The Claimant wishes an accurate accounting of its monies and an Order that all monies found due on such an accounting be paid forthwith to the Claimant".

[10] On the 28th September 2011, the Defendant filed an application, seeking an order that: -

"The Fixed Date Claim Form and the Application filed herein be dismissed with costs against the Claimant."

[11] The grounds of the Application are stated as follows: -

- i). Section J 13 of the Antigua and Barbuda Labour Code, Cap 27 (as amended) provides that the negotiation fee shall be paid to the certified sole bargaining agent;
- ii). The Claimant has filed the Fixed Date Claim on the basis that it is entitled to the Union Dues claimed "as the designated Bargaining Agent for Non-Established Workers of the Government of Antigua and Barbuda."
- iii). The Claimant has not made any claim or assertion that it is the certified sole bargaining agent for the employees in the bargaining unit; and
- iv). The Claimant has not been certified as the sole bargaining agent for the employees on whose behalf he has instituted this action, therefore lacks the locus standi to institute this claim or the application both of which were filed on March 29, 2011.

[12] On March 12th, 2012 almost six (6) months after the filing of the Notice of Application referred to in paragraph 11 above, an Affidavit in Support was filed. This Affidavit was sworn to by Mr. Lebrecht Hesse, the Solicitor General of Antigua and Barbuda, on behalf of the Defendant. In the said Affidavit Mr. Hesse deposed, inter alia that: -

"1

2. The Application raises the issue of the legal standing of the Claimant to institute the legal action in light of the interpretation of section J 13 of the Antigua and Barbuda Labour Code, Cap. 27 (as amended).
3. I attach herewith as exhibit "LH1" two letters written to the Claimant's Counsel and dated respectively May 31, 2011 and July 12, 2011 to which there has been no reply."

[13] The letters referred to in paragraph 3 of the Affidavit of Mr. Hesse are hereby reproduced: -

(a) Letter # 1

"31st May, 2011

Messrs Marshall and Co.
Attorneys-at-Law
Rebecca House
Factory Road
St. John's
Antigua W.I

Dear Sirs,

Re: High Court Claim No. 1201/2011
Antigua Trades and Labour Union v. Attorney General

I refer to the above-captioned claim with its accompanying Application and Affidavit in support which were filed on March 29, 2011.

I wish to draw your attention to the proviso section of J 13 (2)(a) and section J 13 (2)(c)(i) of the Antigua and Barbuda Labour Code, Cap. 27 the joint effect of which is to make the "negotiating fee" payable only in respect of employees who are not members in good standing of the Antigua Trades and Labour Union. Your claim has failed to indicate the "benefiting employees" who do not satisfy the conditions in the proviso which information is not within the knowledge of the Government.

Secondly, the Amending Act No. 7 of 2007 (which your Affidavit refers to as "the New Law") provides that the "negotiating fee" shall in the case of an employee who is not a Union member, be equal to the membership dues of the Union. The Collective Agreement filed (which in reality is only an amending document) does not substantiate the Union's entitlement to the fee amount payable.

Very truly yours,

.....
Justin L. Simon, QC
Attorney General and
Minister of Legal Affairs

JSL/kj"

(b) Letter # 2

**"Government of Antigua & Barbuda
Ministry of Legal Affairs, Office of the Attorney General
Government Office Complex, Parliament Drive
St. John's ANTIGUA W.I.**

July 12, 2011

Hugh Marshall Esq.
Marshall & Co. Chambers
Factory Road
St. John's
Antigua

Dear Sir,

Re: High Court Claim No. 0201/2011
Antigua Trades and Labour Union v Attorney General

Further to my letter dated May 31, 2011, I have again read the relevant sections of the Antigua and Barbuda Labour Code in reference to your client's claim, and raise the following additional issues for your consideration and subsequent discussion when we meet.

Section J 13 provides that "the certified trade union (as provided by section J 4) shall be the sole bargaining agent for all employees in the involved bargaining unit" and as such is entitled to the "negotiating fee". It would appear that for AT& LU to have locus standi to bring this action, it must be a certified trade union and not a registered bargaining agent.

Secondly, negotiating fee is to "be equal to the membership dues of the certified trade union", instead of the "fifty dollars per contract year". You will therefore need to advise the membership dues in addition to the names of the "benefiting employees".

I stand ready to discuss this matter further towards a settlement and would propose any Friday at 2:30 p.m.

Very truly yours,

.....
Hon. Justin L. Simon, QC
Attorney General and
Minister of Legal Affairs

cc: Financial Secretary, Ministry of Finance
Accountant general, Treasury Chambers

JLS/drp"

[14] When the matter came up in Open Court on the 9th February 2012, the matter was adjourned to a date to be fixed by the Court office.

[15] The matter came up again on March 14th 2012 and was adjourned to 16th March 2012. On the adjourned date, the Court ordered that Counsel file written submissions in the matter.

THE LAW

[16] The relevant provisions of the Antigua and Barbuda Labour Code, Cap. 27 (the Act) are contained in Section J 13. Section J 13 of the Act states as follows: -

a) Section J 13 (1) of the Act states as follows: -

“As provided by section J 4 the certified trade union shall be the sole bargaining agent for all employees in the involved bargaining unit; and as indicated in section K 4 (2) (c), it shall have the duty to represent all such employees in negotiating collective agreements”.

b) Section J 13 (2) (a) states as follows: -

“Every employee in the involved bargaining unit shall have the right to benefit from any collective agreement negotiated in terms of subsection (1), less a negotiating fee:

Provided that where an employee becomes or having become remains a member in good standing of the certified trade union no such fee shall be paid to the certified trade union.”

c) Section J 13 (2) (b) (as amended by section 24 of No. 16 of 1998) states as follows:-

“The negotiating fee referred to in paragraph 2(a) shall, in the case of workers other than union members, for the bargaining unit be fifty dollars per contract per year.”

d) Section J 13 (c) states as follows: -

- (i) “The negotiating fee shall be payable by the employer in respect of each benefiting employee who does not satisfy the conditions in the proviso to paragraph 2 (a) and, if not paid within thirty days shall be recoverable as a civil debt from the employer.
- (ii) “The negotiating fee referred to in this section shall be paid to the certified sole bargaining agent in respect of each collective agreement negotiated by it.”

e) Section J 13 (2) (d) states as follows:-

“Benefiting employee” for the purpose of this subsection means any person who was a member of the sole bargaining unit on the date when the collective agreement was made.”

[17] Section J 13 (2) was amended by The Antigua and Barbuda Labour Code (Amendment) Act 2007, No. 7 of 2007 (the Amendment Act). The Amendment reads as follows:-

"Section J 13 (2) of the Antigua and Barbuda Labour Code is amended ---

a. by the repeal of the proviso in paragraph (a) and the substitution of the following—

"Provided that where an employee becomes or having become remains a member in good standing for the certified trade union no such fee shall be deducted by the employer"

b. by the repeal of subparagraph (b) (i) and the substitution of the following subparagraph—

"(2) (b) (i) The negotiating fee referred to in paragraph (2) (a) shall, in the case of a worker who is not a union member, in the bargaining unit, be equal to the membership dues of the certified trade union;"

(c) by the repeal of subparagraph (b) (ii) and the substitution of the following subparagraph –

"(2) (b) (ii) This section shall notwithstanding any other law which limits deductions by employers or other persons in respect of wages or other remuneration payable to employees."

[18] The Court notes that, whereas the Amendment Act referred to in paragraph 17 above purports to amend Section J13 (2) by, inter alia, the repeal of subparagraphs (b) (i) and (b) (ii), Section J 13 (2)(b) of the previous Act, namely Cap 27 did not comprise (b) (i) or (b) (ii) . The previous Act spoke only of subsection 13 (2) (b). It would appear that, in reality, the Amendment Act repealed subsection 2 (c) of the previous Act and substituted the said subsections with the provisions as stated in paragraph 17 above.

SUBMISSIONS OF COUNSEL

[19] The submissions of Learned Counsel for the Defendant are as follows:-

a) It seems clear that the trade union which is entitled to receive the negotiating fee as the employees' bargaining agent must be a 'certified trade union', sometimes referred to in that legislative section as the 'certified sole bargaining agent.' The marginal note to

Section J13 clearly suggests that it is upon certification as a sole bargaining agent that the rights expressed in that Section are bestowed on the bargaining unit or trade union.

- b) The union must be 'the certified trade union' to institute the claim; accordingly, the Defendant has sought confirmation from the Claimant by letter dated July 12, 2011 addressed to the Claimant's Counsel. No reply has been forthcoming.
- c) Section J3 of the Act defines the term 'certification' to mean 'the Labour Commissioner's official announcement that one or other registered trade union has received the requisite number of votes in a secret ballot among employees in an appropriate bargaining unit to enable it to act as sole bargaining agent for employees in said unit (and such trade union may be referred to herein as the 'certified bargaining agent.')
- d) The terms 'certified trade union' or 'certified sole bargaining agent' or 'certified trade union' as used in Section J13 of the Act are "terms of art and bear a specific meaning; certification by the Labour Commissioner is a required essential, and that in the absence of such certification the Claimant does not have locus standi to institute this claim in light of the directive given in section J13 (2) (c) (ii) that the negotiating fee referred to in section J13 " shall be paid to the certified sole bargaining agent."

[20] The rival submissions of Counsel for the Claimant are as follows:-

- a) It is important to record that there is no affidavit evidence to support the application of the Respondent. With reference to ground iv on which the Respondent's application is based, (see paragraph 11 above), Counsel submits that "it is significant to point out at this stage that ground iv for obvious reasons requires evidence to support this contention. The Respondent Applicant has chosen to present no evidence, thus this ground must fail for lack of proof."
- b) Regard must be had to the entire section J of the Antigua and Barbuda Labour Code. Note must be made of the unchallenged assertion of Alrick Daniel in the Affidavit filed in support of the Claimant's application and relied upon for (sic) the Claim Form. Paragraph 2 of the Affidavit states that "in or about January 1960 the Claimant Organization became the Collective bargaining agent for and on behalf of all non-established workers with the

Government of Antigua and Barbuda." It is to be noted that the Antigua and Barbuda Labour Code was first enacted in 1972, some 12 years after the Claimant was the sole bargaining agent of the relevant workers.

- c) Division J of the Labour Code is concerned with the question of Employee Representation. A sole bargaining agent is defined under the section to mean "the representative of a bargaining unit of employees, as described in section J 4." Section J4 goes on to provide that an employee may be represented by a Trade Union of his choice as his sole bargaining agent.
- d) The essence of "certification" as set out in section J3 is that the organization is recognized by the Labour Commissioner as the sole bargaining agent for the employees in the said unit. There is (sic) no special words or means by which the Labour Commissioner is to so recognize a Trade Union.
- e) The Claimant is indeed the 'certified Trade Union" and 'sole bargaining agent' within the meaning of Section 13. It is the Organisation that has not only had the duty to represent all employees in the unit but has done so in the collective agreement exhibited to the Affidavits of Alrick Daniel.
- f) The Respondent is estopped from raising the issue of whether the Claimant is the "certified bargaining agent." The Claimant has been recognized by the Labour Commissioner as the Sole Bargaining Agent in accordance with the provision of Division J of the Act. The Court's attention is drawn to Exhibit "AD1" to the Affidavit of Alrick Daniel. This document (AD1) is titled " Collective Bargaining Agreement between the Government of Antigua and Barbuda and The Antigua Trades and Labour Union on Behalf of Government Non-Established Workers. " This document is also signed by the Labour Commissioner. .
- g) The occasion at which the Respondent should have raised the issue as to whether the Claimant was a 'certified bargaining agent 'was not at the time of the claim, but when it was entering into a collective bargaining agreement. It then elected not to raise such an issue and is accordingly now estopped from so raising.

- h) Additionally, the Respondent has made several payments to the Claimant under Section J13 as set out at paragraph 5 of Alrick Daniel's Affidavit. All of this amounts to conduct that represents that the Respondent holds the Claimant to be the Requisite Bargaining Agent and entity entitled to the payments under Section J13 of the Antigua and Barbuda Labour Code – (see Halsbury's Laws of England, 3rd edition, paragraphs 422-440).

Is the Defendant estopped from raising the issue of the locus standi of the Claimant?

- [22] The concept of estoppel is well known to the law. In **Amalgamated Investment & Property C. Ltd. v Texas Commerce International Bank Ltd.**¹, Lord Denning gave the following classical definition:-

“When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.”

- [23] Halsbury's Laws of England², defines 'estoppel' in the following terms:-

“Estoppel' has been described as a principle of justice and of equity which prevents a person who has led another to believe in a particular state of affairs from going back on the words or conduct which led to that belief when it would be unjust or inequitable (unconscionable) for him to do so. The person making the statement, promise or assurance is said to be estopped from denying or going back on it; 'estoppel' means 'stopped'.

The doctrine of estoppel has developed in a number of separate areas, both common law and equitable.....With the exception of proprietary estoppel, estoppel cannot be used as a cause of action, but it may ensure the success of a cause of action by preventing a party from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear.”

- [24] In the view of the Court, the relevant Government Department has conducted dealings with the Claimant on the basis that the Claimant is the sole bargaining agent. In this regard, the letter dated 19th October 2009 written by Mr. Alrick Daniel to the then Accountant General Dr. Cleopatra Gittens, is instructive. The letter is hereby reproduced.

¹ (1982) 1 QB 84

² Fourth Edition, vol.16(2), page 407, paragraph 951

**"ANTUGUA TRADES & LABOUR UNION
EMANCIPATION HOUSE, P.O. BOX 3, 46 NORTH STREET
ST JOHN'S, ANTIGUA, W.I.**

19th October, 2009

Dr. Cleopatra Gittens
Accountant General
Treasury
High Street
St. John's
Antigua

Dear Dr. Gittens,

On Tuesday 13th October 2009, the AT&LU collected a cheque from the Treasury in the amount of E.C \$20,584.61 representing Non-Established Government Workers Union Dues and Negotiation Fee. The cheque also indicated that the amount was for the month of June. As I indicated to you in a subsequent telephone conversation this amount appears to be incorrect since it would only represent the Union Dues and Negotiation Fee for approximately 1029 Non-Established Government Workers weekly. Further the sum of itself is not consistent with being a product of a \$ 5.00 fee per person.

Once again we are faced with a situation where the AT&LU is obviously not receiving its rightful entitlements. Over the years this situation has gravely affected our ability to provide training and other benefits to our membership. Certainly we cannot allow this fester any longer. Therefore AT&LU would be grateful if your Department could investigate the reason(s) why the workers contribution to the AT&LU is not being furnished in its entirety.

I trust that your Department will have access as to the number of Non-Established-Government Workers employed in each ministry and further each Ministry's submission of Union Dues/Negotiation Fee to the treasury.

Your assistance in this regard will be deeply appreciated.

Sincerely yours,

.....
Alrick Daniel (Mr.)
General Secretary (Ag.)

cc Leonard Mussington – Treasurer AT&LU"

[25] It is evident from the above letter – to which, according to the Claimant, there has been no reply - that there has been a course of conduct or dealing between the Claimant and the relevant Government Department,

namely the Government Treasury Department, sufficient to have led the Claimant to believe that it had the authority to represent the Non-Established Workers of the Government of Antigua and Barbuda as their designated bargaining agent. There is no evidence that the Claimant's claim of being the recipient of a cheque from the Antigua and Barbuda Treasury dated 13th October 2009, in the sum of \$20,584.61, was disputed or contradicted.

[26] The Affidavit of Mr. Alrick Daniel filed on the 29th day of March 2011, provides further proof of conduct or dealings between the Claimant and the Government Treasury. In paragraph 5 of the said Affidavit, Mr. Daniel deposes as follows:-

"Since the implementation of the New Law or rather since the amendment, the Claimant has received the following payments:

a.	On 20 th December, 2006 for December 2007 dues in the amount of:	\$ 10,934.00
b.	On 31 st May, 2007 for April 2007 dues in the amount of:	\$ 7,266.25
c.	On 6 th July, 2007 for January 2007 dues in the amount of:	\$ 5,366.25
d.	On 6 th July, 2007 for February 2007 dues in the amount of:	\$ 7,456.00
e.	On 6 th July, 2007 for March 2007 dues in the amount of:	\$ 8,226.50
f.	On 19 th September, 2007 dues for May, June and July 2007 in the amount of:	\$ 23,901.19
g.	On 20 th December, 2007 dues for August & September 2007 in the amount of:	\$ 12,084.75
h.	On 20 th December, 2007 dues for October 2007 in the amount of:	\$ 6,985.75
i.	On 4 th February, 2008 dues for October & November 2007 in the amount of:	\$ 13,822.50
j.	On 14 th April, 2008 dues for December 2007 in the amount of:	\$ 8,253.97
k.	On 22 nd May, 2008 dues for January 2008 in the amount of:	\$ 6,283.00
l.	On 22 nd May, 2008 dues for February 2008 in the amount of:	\$ 14,886.90
m.	On 29 th May, 2008 dues for March 2008 in the amount of:	\$ 18,149.75
n.	On 27 th June, 2008 dues for April 2008 in the amount of:	\$ 13,013.00
o.	On 27 th August, 2008 dues for May and June 2008 in the amount of:	\$ 42,139.10
p.	On 1 st December, 2008 dues for July 08 in the amount of:	\$ 19,401.00
q.	On 1 st December, 2008 dues for August 2008 in the amount of:	\$ 19,639.07
r.	On 13 th January, 2009 dues for September 2008 in the amount of:	\$ 21,237.15
s.	On 13 th January, 2009 dues for October and November 2008 in the amount of:	\$ 49,148.75
t.	On 13 th May, 2009 dues for December 2008-April 2009 in the amount of:	\$110,611.64
u.	On 9 th September, 2009 dues for May 2009 in the amount of:	\$ 15,418.25
v.	On 13 th October, 2009 dues for June 2009 in the amount of:	\$ 20,584.61
w.	On 19 th November, 2009 dues for July 2009 in the amount of:	\$ 39,499.28
x.	On 7 th December, 2009 dues for August 2009 in the amount of:	\$ 43,815.00
y.	On 11 th February, 2010 dues for August 2009 in the amount of:	\$ 44,395.00
z.	On 13 th April, 2010 dues for September 2009 in the amount of:	\$ 44,944.75
aa.	On 20 th May, 2010 dues for October 2009 in the amount of:	\$ 28,990.94
bb.	On 11 th May, 2010 dues for November 2009 in the amount of:	\$ 44,646.44
cc.	On 23 rd August, 2010 dues for December 2009 in the amount of:	\$ 83,430.00

dd. On 2 nd November, 2010 for May 2010 in the amount of:	\$ 8,265.00
ee. On 3 rd November, 2010 dues for May 2010 in the amount of:	\$ 33,710.00
ff. On 17 th November, 2010 dues for June 2010 in the amount of:	\$ 43,916.21
gg. On 25 th November, 2010 dues for July 2010 in the amount of:	\$ 45,381.21
hh. On 28 th December, 2010 dues for August 2010 in the amount of:	\$ 46,680.71
ii. On 26 th January, 2011 dues for January 2010 in the amount of:	\$ 22,790.00
jj. On 9 th February, 2011 dues for February 2010 in the amount of:	\$ 46,243.50
kk. On 10 th March, 2011 dues for March 2010 in the amount of:	\$ 52,666.00"

[27] In paragraph 9 of the said Affidavit, the Claimant further deposes that "in any event, the Government has made no payments for the period April 2010 and September 2010 to present..." It would appear, therefore, that up until March 2011 payments were being made by the Government to the Claimant.

[28] The Court is also of the view that the two (2) Collective Bargaining Agreements between "The Government of Antigua and Barbuda and the Antigua Trades and Labour Union on Behalf of Government Non-Established Workers" exhibited to the Affidavits of the Claimant are further evidence that the Government conducted dealings with the Claimant on the basis that the Claimant was the representative of the non-established workers. The first Agreement, a photocopy of which was attached to the Second Affidavit of Alrick Daniel as Exhibit "AD-2", was filed on the 19th April 2012. (the First Agreement.) That Agreement is stated as being a "Collective Bargaining Agreement between The Government of Antigua and Barbuda and The Antigua Trades and Labour Union On Behalf of Government Non-Established Workers" - Effective - 1st September 1994 to 31st August 1997." The First Agreement is dated 5th May 2000 and was signed by someone "For and on behalf of The Government of Antigua and Barbuda." It was also signed by someone "For and on behalf of Antigua Trades and Labour Union."

[29] Under the heading 'RECOGNITION AND SCOPE" of the First Agreement, the following is stated:-

- a. The Union (Antigua Trades and Labour Union) represents to the Government (the Government of Antigua and Barbuda) that it is the duly constituted and authorized representative of a majority of the employees in the classification listed, and that it exists and operates in full compliance with all applicable laws of Antigua. Based upon these representations, the Government recognizes the Union as the sole and exclusive

bargaining agent for the employees in the classification listed with respect to wages, hours of work and conditions of employment.”

[30] Clause 24 of the First Agreement makes it clear that the First Agreement in with respect to “Government non-established workers.”

[31] The second agreement, which is referred to in the letter of the Honourable Attorney General dated 31st May 2011 as “in reality only an amending document”, is dated the 31st December, 2004 (the Second Agreement). A copy of Second Agreement was attached to the Affidavit of Alrick Daniel filed on 29th March 2011 as Exhibit “AD.1.” This Agreement is stated as being a “Collective Bargaining Agreement between the Government of Antigua and Barbuda and the Antigua Trades and Labour Union on Behalf of Government Non-Established Workers Effective 1st January 2000 to 31st December, 2002.” The Preamble to this Second Agreement states:-

“This Agreement only amends the relative clauses of the previous Agreement, hence, all other clauses of the previous agreement still hold. In entering into this Agreement, the parties recognize the necessity of compliance with its terms and the development of a continuing spirit of co-operation for the mutual benefit of the Government, the employees and the public service.”

The Second Agreement is signed by someone “For and on behalf of The Government of Antigua and Barbuda” and by someone “For and on behalf of Antigua Trades and Labour Union.” Additionally, the Second Agreement is signed “In the presence of the (Ag.) Labour Commissioner.”

[32] The kernel of the Defendant’s submission is that the relevant Statute, namely the Antigua and Barbuda Labour Code, Cap 27 (as amended), in particular Section J 13, provides that the negotiation fee shall be paid to the certified sole bargaining agent, and that the Claimant has not been certified as the sole bargaining agent for the employees on whose behalf he has instituted this claim. Accordingly, that the Claimant does not have locus standi to institute the claim. As stated above, Counsel for the Claimant submits that the Defendant is estopped from raising this issue.

[33] According to Snell's Equity³:-

"A party cannot rely on an estoppel in the face of a statute – Kok Hoong v Leong Cheong Kweng Mines Ltd [1964] A.C. 993 at 1015. Although the principle is of general application it only applies where it would be contrary to the policy of the statute to permit a party to rely on an estoppel."

[34] Halsbury's (supra) at page 413, paragraph 960, states:-

"There is no absolute rule as to whether estoppel may, or may not, be used to circumvent a statutory provision although the principle that a party cannot set up an estoppel in the face of a statute has been described as a principle that appears in our law in many forms. A clear public policy underlying a statute, such as the need to protect vulnerable persons dealing with moneylenders or landlords, may prevent an estoppel from arising, but in **other instances statutory requirements , for example as to formalities or time limits, may be circumvented by estoppels.**" (my emphasis.)

[35] Learned Counsel for the Defendant have submitted that the terms 'certified trade union', or 'certified sole bargaining agent' or 'certified trade union' as used in Section J13 are " terms of art and bear a specific meaning." Halsbury's (supra) at page 415, paragraph 961, states thus:-

"It is an established rule that where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person or body charged with the performance of the duty (normally a public authority which is a creature of statute) cannot be prevented by estoppel from exercising his or its statutory powers. Nor is it permissible to use estoppel to enable or oblige a public authority to do something which is beyond its statutory powers.

It has been stated that a public authority cannot be estopped from doing its duty **but can be estopped from relying on technicalities.**" (my emphasis.)

[36] In the case of **Yaxley v Gotts**⁴, it was held that, "the general principle that a party cannot rely on an estoppel in the face of a statute depends upon the nature of the enactment, the purpose of the provision and the social policy behind it."

[37] The Antigua and Barbuda Labour Code (the Act) was enacted for the benefit of the public. Section A2 of the Act states as follows:-

³ 32nd Edition, page 379, paragraph 12-013

⁴ [2000] Ch.162 at 191A

"It is the intent of the Legislature, to bring together, insofar as is practicable, all legislation applicable to employment, employment standards, and industrial relations in Antigua and Barbuda so that-

- i. Employers and employees can more expeditiously ascertain information as to their rights and responsibilities;
- ii. Persons inside and outside Antigua and Barbuda considering the investment of funds in enterprises to be based in Antigua and Barbuda will have a centralized source of information as to the rights and responsibilities of management and of labour; and
- iii. Legislation can be more amenable to revision, when revision is appropriate."

[38] Division J of the Act is the Employee- Representation Questions (Resolution) Division. Section J2 speaks to the "national policy" underlying this Division, and speaks further of that policy as 'necessary to create a machinery whereunder the questions concerning representation can be resolved."

[39] Under the Statute, the Labour Commissioner has the right to recognize a Trade Union as the sole bargaining agent; he is the one who has the duty of 'certification'. Section J3 of the Act states:-

"certification" means the Labour Commissioner's official announcement that one or other registered trade union has received the requisite number of votes in a secret ballot among employees in an appropriate bargaining unit to entitle it to act as sole bargaining agent for the employees in said unit (and such trade union may be referred to herein as the 'certified bargaining agent'); or the Labour Commissioner's official announcement that, in such a secret ballot, a majority of votes has been against any trade union being entitled to act as sole bargaining agent (and such announcement may be referred to herein as the "Certificate of Results");

[40] In the view of the Court, the fact that a (previous) Labour Commissioner has signed the Collective Bargaining Agreement referred to in paragraph 28 above combined with the fact that the Claimant has been paid monies by the Government Treasury on behalf of the Non-Established Workers for the period 2007 to 2010, created or encouraged a belief on the part of the Claimant that it was entitled to act as the sole bargaining agent or the designated bargaining agent for Non-Established Workers of the Government of Antigua and Barbuda. The Claimant has acted on that belief in its dealings with the relevant Government Department. It would be unconscionable to allow the absence of "certification" to prevent the Claimant from instituting the present claim.

[41] The Court is of the further view that it is significant that there is no evidence that the Labour Commissioner has taken any steps to "decertify" the Claimant. Section J3 of the Act defines "decertification" as follows:-

"decertification" means the Labour Commissioner's official announcement that, in a secret ballot conducted under this Division, a trade union **which has been acting as sole bargaining agent** (my emphasis) for a unit of employees has received less than the requisite number of votes entitling it to **continue to act as sole bargaining agent** (my emphasis) for such employees (and such trade union may be referred to herein as the "decertified union");"

[42] It is worth noting that "decertification" does not require that the trade union is a "certified bargaining agent"; merely that it was acting as "sole bargaining agent". In the absence of the Labour Commissioner's official announcement that the Claimant, which has been acting as sole bargaining agent, has been "decertified", the Claimant was entitled to continue to hold the view that it represented the Non-Established Workers of Antigua and Barbuda as their sole bargaining agent.


CONCLUSION

[43] The Court is of the view that based on the facts and on the law, the Defendant is estopped from contending that the Claimant does not have locus standi to institute the claim filed on the 29th day of March, 2011.

ORDER

My order is as follows:-

1. The Defendant's application filed on the 28th September 2011 is hereby dismissed.
2. The Claimant is awarded costs in the sum of \$2,500.00.


Jennifer A. Remy
High Court Judge