



# Supreme Court rules closure of business following union certification breach of Labour Code

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On June 27, 2014, the Supreme Court of Canada released its decision in [United Food and Commercial Workers, Local 503 v. Wal-Mart Canada Corp.](#) and held that Wal-Mart breached section 59 of the Quebec Labour Code (the “Code”) when it closed its store in Jonquiere, Quebec following the Union’s certification of the employees at that location.

By way of background, in 2004 the United Food and Commercial Workers, Local 503 (the “Union”) was certified as the bargaining agent for the Wal-Mart employees working at the Jonquiere location. Although Wal-Mart and the Union met several times over the following months, they were not able to negotiate a first collective agreement. In 2005, the Union applied to the Minister of Labour for the appointment of an arbitrator to settle the agreement; however, Wal-Mart unilaterally closed the Jonquiere location. The Union brought several proceedings against Wal-Mart alleging that the closure was based on anti-union animus. One such proceeding was a grievance based on the allegation that Wal-Mart had breached the “freeze” period set out in section 59 of the Code. Section 59 of the Code states:

From the filing of a petition for certification and until the right to lock out or to strike is exercised or an arbitration award is handed down, no employer may change the conditions of employment of his employees without the written consent of each petitioning association and, where such is the case, certified association.

In 2009, an arbitrator upheld the Union’s grievance finding that Wal-Mart’s dismissal of the employees constituted a unilateral change to the conditions of employment and therefore in contravention of the Code. This decision was upheld by the Superior Court but then quashed by the Quebec Court of Appeal on the basis that it deprived Wal-Mart of its management rights, in particular, the right to close its business.

In a split decision, a majority for the Supreme Court of Canada disagreed with the Court of Appeal and restored the arbitrator’s decision. In the majority’s view, continued employment was an implicit term of the contract of employment and therefore a condition of employment for the purposes of section 59. The majority stated that an intent of section 59 is to preserve the working environment to facilitate good faith bargaining. An employer retains its management rights and is not prohibited from modifying the working conditions of its employees during the freeze period, however, any such modification, including the closure of a business, must be reasonable and in accordance with the



normal business practices of the employer. Since the evidence was that the Jonquiere establishment was performing very well and meeting objectives, Wal-Mart's decision was not justified or reasonable. The Supreme Court upheld the arbitrator's decision and remanded the case back to the arbitrator to determine the appropriate remedy.

## **In our view**

Although the issue before the Supreme Court involved the Quebec Labour Code, the decision will impact the interpretation of similar legislation in each of the provinces and at the federal level.

The lesson for employers is that they must ensure that during the statutory freeze period, any change to the conditions of employment are reasonable and justifiable on the basis that they occur in the normal course of business. An employer that is unable to justify modifications to the terms of employment may be found to have committed an unfair labour practice, and subject to a range of remedial sanctions available to a labour board.

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