Ten years after the looting of their pension fund:

Canadian Court of Appeal rules against White Birch Paper retirees

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11 June 2020

On May 20, the Quebec Court of Appeal ruled against unionized retirees from the Stadacona pulp and paper mill in Quebec City, which is owned by White Birch Paper. The Court rejected the retirees' request for compensation from their former union, Unifor, for conspiring with the company behind their backs between 2010 and 2015 in a corporate restructuring that led to the liquidation of their pension fund.

The ruling represents the culmination of nearly a decade in which the courts provided pseudo-legal cover for White Birch's brutal assault on the workers. Conducted with the full complicity of Unifor, this assault is part of a big business drive to gut worker pension plans in Quebec, the rest of Canada and internationally.

In its decision, the Court of Appeal ignored or distorted facts to make a political judgment aimed at protecting the union bureaucracy from a growing sentiment of opposition, even rebellion, among rank-and-file workers.

This judgment was made under conditions of an immense health and socio-economic crisis triggered by the COVID-19 pandemic and the criminal negligence of capitalist governments around the world, including that of François Legault in Quebec and the federal Liberal government of Justin Trudeau in Ottawa.

With millions of Canadians having lost their jobs since March, the ruling class fears a social explosion. It depends more than ever on the pro-capitalist unions to contain and stifle working class anger and opposition. The ruling in defense of Unifor is the legal expression of this political alliance.

Stadacona is a newsprint and cardboard factory that has been in existence since 1927. In 2004, the mill was bought by White Birch Paper, a company controlled by multimillionaire Peter Brant (whose personal fortune was estimated at between US$500 million and US$800 million in 2010).

The transaction took place in the context of a global crisis in the pulp and paper industry. The rapid development of the Internet in the early 2000s led to a massive decrease in the circulation of printed newspapers and magazines and, therefore, in the demand for paper. This technological revolution, combined with the deepening of the global crisis of capitalism, particularly after the financial collapse of 2008, led to a wave of closures of pulp and paper mills and plants and massive jobs cuts.

In eastern Canada, about 43,000 jobs were lost in this sector between 2003 and 2017, or almost 45 percent of the workforce. Immediately following the purchase of Stadacona in 2004, White Birch made significant job cuts. Between 2004 and 2010, the number of employees at the plant fell from 1014 to 585.

However, job cuts are no longer enough for the ruling class. In a context of fierce international competition and declining profit rates, it demands ever-higher returns on investments requiring ever-deeper attacks on working conditions. These include the reopening of collective agreements and the destruction of existing pension plans.

In the case of White Birch, a court-supervised restructuring was to provide the opportunity to take these steps from 2010 onwards. At the time, the company owned three paper mills in Quebec and one in the United States.

The employees' pension funds, which had been heavily in deficit due to the company's failure to pay into them for several years, were immediately targeted.

In September 2010, the courts authorized an offer to buy White Birch's assets by a combination of its main creditors, the Black Diamond investment fund and Credit Suisse, and a new iteration of White Birch still controlled by Peter Brant. The new entity would be named BD White Birch (BDWB).

The $90 million BDWB bid was well below the market value of White Birch, which was valued at $200 million or more, and it was subject to several draconian conditions. New collective agreements had to be imposed; the workers' defined-benefit pension plans had to be replaced by "target-benefit" or defined-contribution pension plans (whose benefits could decline with fluctuations in the financial markets); and the company had to be released from accumulated pension liabilities. Otherwise the transaction would not go ahead.

At the time of the restructuring, employees at the Stadacona plant were represented by four local unions, all affiliated with the Communications, Energy and Paperworkers Union (CEP), which was to become Unifor after its merger in 2013 with the

CAW (Canadian Auto Workers).

CEP/Unifor (to be referred to as Unifor in what follows) supported an aggressive company campaign to impose a major assault on jobs, wages and pensions, despite strong opposition from rank-and-file workers.

The Court of Appeal reported that in April 2011, the Quebec director of Unifor was summoned to Ottawa by its national director for a meeting attended by the principal executive of BD White Birch, Christopher Brant, son of Peter Brant. In collusion with Unifor, Brant demanded the winding-up of the defined-benefit pension plans in exchange for the payment of approximately $50 million into the new target benefit plans. The pension funds then had an accumulated deficit of about $250 million.

This was followed by a series of actions aimed at breaking the resistance of workers at Stadacona and other BD White Birch plants, who on several occasions had overwhelmingly rejected the sellout contracts that the union had brought before them for their vote.

In October 2011, BD White Birch temporarily closed the Stadacona plant in an attempt to blackmail the workers. In January 2012, BDWB announced the permanent closure of the plant, which was only averted by $35 million in financial assistance from the Quebec government. In February 2012, the company arranged with the unions to conduct separate negotiations for each of the three Quebec plants, a tactic that led to concession agreements at the other two plants.

Divided, exhausted and disorganized by Unifor, the Stadacona workers finally accepted BDWB's offer on March 24, 2012. The offer called for BD White Birch to pay a meagre $35 million into the new pension funds. Between the acceptance of this offer in March 2012 and its implementation in 2015, the company, with the full cooperation of Unifor, continued to put pressure on the workers to reduce its contribution. Following the final agreement reached with the union, BDWB contributed around $29.5 million to the new target benefit pension plans.

The White Birch restructuring has been a disaster for the Stadacona workers: 200 more jobs lost (just over 300 workers remain at the plant today), a 10 percent wage reduction, cuts in vacation and group insurance, and the liquidation of the old pension plans. Some workers have suffered losses estimated at $250,000 due to changes in their collective agreements. The situation is equally dire for retirees: unionized retirees have lost about 25 percent of their pensions and non-unionized retirees 47 percent.

Denied the right to vote on BD White Birch's final offer, the unionized retirees decided to take Unifor to court. They could not sue BDWB because, in a final act of betrayal, Unifor manoeuvred management and the courts to force all retirees to sign a full and final release of all claims against the company.

In 2018, the Quebec Superior Court recognized that Unifor had committed "gross negligence" towards the Stadacona pensioners and had breached its duty of representation by not consulting the pensioners regarding BDWB's offers. Despite this, the judge refused to order Unifor to compensate the retired workers, on the spurious ground that there was no causal link between the union's negligence and the loss suffered by the plaintiffs.

In its May 20 judgment, the Court of Appeal not only upheld the trial judge's conclusion, but also reversed its decision on Unifor's negligence. The Court of Appeal substituted its own politically biased and factually incorrect analysis of the evidence to rule that Unifor had not failed to consult or inform the plaintiffs and was not even under a legal obligation to do so.

Lessons must be learned from the bitter experience of the workers and retirees at the Stadacona pulp and paper mill. In its struggle to defend jobs and pensions, the working class faces the ferocity of big business, the complicity of the judiciary as an arm of the capitalist state, and the perfidy of the union bureaucracy.

It is not by turning to the courts that working people will be able to oppose the corporate onslaught and settle their accounts with the agents of big business in the union bureaucracy. Rather, they must build new organizations of struggle—rank-and-file committees, completely independent of the pro-capitalist unions, that will mobilize the full social power of the working class to defend its social rights.

Such a struggle must be based on an internationalist perspective, in order to forge the unity of workers across national borders against transnational companies that are constantly seeking, with the help of the nationalist trade unions, to pit workers against each other.

It must be combined with the independent political mobilization of the working class on the basis of a socialist program—that is, the fight for a workers' government that will radically reorganize the economy so as to make meeting the social needs of the population, not enriching a tiny cabal of investors, its organizing principle.