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Courts spurn ‘unfair’ union fines

Canadian workers have little viable protection from their union leaders

By John Mortimer, National Citizens Review - May 14, 2009

It’s the end of the legal road for Canadian unions that threaten legal action to collect fines from unionized workers, just to maintain union solidarity on the picket line.

In May, the Supreme Court of Canada dismissed union applications for leave to appeal lower court judgments in Alberta and Ontario. These rulings upheld the rights of workers against the tyranny of union leaders by reinforcing the common law that the courts cannot be used by unions to enforce discipline and collect fines.

This series of legal victories may also be the first real and full victory for worker rights over inappropriate union leader powers that are endemic to the unreformed scheme of Canadian labour law. The NCC, the lawyers and LabourWatch benefitted greatly from the perseverance of the persecuted employees in Ontario and Alberta who had the guts to stand up for all workers from 2004 through 2009 – a long road.

The unions knew they couldn’t collect fines through the courts, yet they continued to deliberately misrepresent the situation to their unionized workers by telling them that unions had won that legal right. Unions even backed up the lie by suing them.

But there has never been a substantive ruling to support their contention. Since 1986, unionized Canadians who’ve been fined and sued by unions have won their court cases when properly represented by labour lawyers.

The only judgments against employees appear to be a couple of small claims court awards where employees either failed to show up or their lawyer was not well-versed in this aspect of the common law.

The Public Service Alliance of Canada (PSAC) knew it couldn’t use the courts to collect fines because its own lawyers told it so.

In 2004, PSAC used forced union dues to get a legal opinion. In an internal memo, then-national president Nycole Turmel advised PSAC’s board that the legal opinion “clearly and without ambiguity” advised the union had no legal ability to enforce the collection of fines in court. As a result, Turmel stated, “It is imprudent and detrimental to the interests of the membership for the union to threaten fines, when we now know that they are effectively unenforceable.” A board committee recommended removing the fining provision. But PSAC never acted on that recommendation and, in an arrogant display of disrespect for the law and the rights of Canadian workers, it continued to use this tactic.

It’s an egregious act of intimidation when a union initiates legal action knowing it has no legal foundation to do so — and it shouldn’t be tolerated in Canadian society.

Canadians have little viable protection from union leaders. Current “duty of fair representation” provisions in labour codes are at best a joke. Labour boards have rendered a union’s duty to be so low that worker claims against unions are almost always dismissed.

In December, 2008, the Ontario Court of Appeal upheld a lower court ruling against collecting fines from unionized workers who exercised their legal right to cross picket lines and do their jobs. In fact, that court ruled such fines “very unfair,” “extremely onerous” and “unconscionable in the circumstances.” In a revealing assessment, the court found that PSAC used the fines “in terrorem.” (Translation: “as a warning; in order to terrify others”.)

Similarly, an Alberta court rejected a request by the Telecommunications Workers Union (TWU) to collect fines levied against hundreds of the more than 4,000 unionized employees who crossed picket lines during a 2005 strike at Telus. The judge found that the TWU essentially wanted the court “to give the authority of law” to internal union discipline and “rubberstamp the ... fine and call it a judgment.”

Now that the Supreme Court has rejected union requests to appeal, will unions apologize to the workers they represent? Or make monetary recompense for what they’ve done to the people? Don’t hold your breath.

Unions don’t appear willing to act according to the law, let alone tell this legal truth to workers. Few unionized employees have been willing or able to stand up for their rights against well-monied and well-lawyered unions.

The Supreme Court’s rejection should affect all unionized Canadians — except for provincially regulated workers in Saskatchewan. Egregious laws passed in 1983 and 1994 override the common law, giving unions the ability to collect fines in Saskatchewan courts.

This aptly demonstrates the power imbalance characterizing the relationship between union leaders and unionized workers (recognized by the Supreme Court, Berry vs. Pulley, 2002). Clearly, our laws must be are amended to reflect that finding and protect workers from union leaders.

Employees in the above legal cases acted because they weren’t happy with how their union leaders handled the strike vote, bargaining and communication with workers. Crossing the line was their only means of expressing that, and that’s why provincially regulated Saskatchewan workers need legislative reform.

Canadian laws are needed to guarantee that a percentage of union dues go to a legal aid fund for workers to defend and even challenge inappropriate union tactics in court. Until then, Canada’s workers will continue to be abused by the very ones they must pay to be their “protectors.”

The Supreme Court has shown a willingness to overturn decades of its rulings regarding the Charter’s Freedom of Association provision, but so far only to the benefit of union power. It is time legislators with conviction to right the wrongs of the messy 1991 Supreme Court Lavigne ruling. International case law trends also suggest that this ruling is also due to be overturned. The fines cases are a step along that road.

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