

PSAC Misleads Ekati Miners on Fines for Working

By John Mortimer – May 12, 2006

Unionization may have seemed like a good idea at the time.

But 16 months later, the Public Service Alliance of Canada (PSAC) has yet to deliver an acceptable collective bargaining agreement to BHP Billiton's 385 unionized employees at the Ekati diamond mine 300 kilometres north of Yellowknife. Miners are now walking the picket line, but about a third are exercising their right to work and over half have made an application to decertify the union.

It appears that PSAC is not pleased by this dwindling enthusiasm, as it is now threatening to levy fines for crossing the picket lines. Its message to those who don't toe the union line is coercive, but simple: Walk the line, pay the fine or do the time (in a court hearing).

An interesting approach to boosting team loyalty – but the threats are misleading and, ultimately, empty.

Current Canadian common law does not allow PSAC to use Canada's courts to enforce the collection of fines – and PSAC is well aware of this fact.

In an internal PSAC memo dated September 17, 2004, then-national president Nycole Turmel informed the union's national board of directors that she was in possession of a legal opinion that "clearly and without ambiguity" concludes the union has no legal ability to enforce the collection of fines from its members in higher courts.

Contrary to that legal advice, PSAC seems committed to intimidating union members and unionized employees into picket line obedience by threatening to fines.

As recently as last month, Ms. Turmel herself penned a column (in the Canadian HR Reporter) expounding on the necessity of collecting union fines to protect the collective bargaining process. She has known for the past 1.5 years that such fines aren't legally binding, yet there is no acknowledgement of that in her column.

In other parts of Canada, PSAC has taken its own members to court and, by spinning the facts of these cases, it is using these 'rulings' to erroneously trumpet the idea that Canadian law supports fines. Nothing could be further from the truth.

First, under Canadian labour law, union members have the right to report to work (except in Quebec); rather than a duty to report to the picket line.

Second, the courts have not endorsed union efforts to penalize those who don't walk the picket line or who choose to cross it. An Ontario small claims court ordered four PSAC members to pay union fines, but each ruling was made "in absentia." That is, union members didn't show up – mostly likely because they were too intimidated, couldn't afford legal counsel or failed to receive proper notice of court dates from the union. In

fact, one court order was recently reversed when the union member retained counsel and went back to court to challenge PSAC.

So it's time to break the myth that these cases were "won." The rulings only underscore the axiom that defendants generally lose if they fail to show up for hearings in small claims court.

In fact, the Canadian LabourWatch Association is unaware of any Canadian court upholding a union fine for working during a strike where a union member has appeared in court with a lawyer to argue the law. A review of jurisprudence shows fines assessed by trade unions are viewed by courts as penalties, not debts or damages. Only Saskatchewan has legislation that permits unions (in limited circumstances) to levy such fines, and that may soon be challenged as well.

What does this mean for Ekati employees?

Union members have the legal right to work without penalty. One way to communicate any dissatisfaction with the union's conduct is to ignore the threats. Employees are free to choose to work (or not) during the course of a strike. That choice is difficult enough without deceptive and misleading threats from PSAC. They should ask PSAC to disclose its 2004 legal opinion and, if necessary, file an unfair labour practices complaint against the union and go to court to protect their legal rights if the union executes its threats.

Ekati employees should also know that the law firm Heenan Blaikie has offered its services *pro bono* to Ottawa-area PSAC members in an effort to reinforce Canadian labour law and, hopefully, convince PSAC to adhere to Canadian labour laws.

Conflicts in labour disputes can be greatly ameliorated by establishing an atmosphere of mutual respect and honesty. PSAC should do its part to foster this by creating a positive, open relationship with its unionized employees – whether PSAC members or not. Union members, the media and the public should all call on PSAC to 1) apologize to Ekati employees, 2) publicly acknowledge and disclose its 2004 legal opinion and, 3) make a public commitment to cease intimidating employees and respect an employee's legal right to do their job if that's what they choose.

These positive initiatives can set a new tone of transparency, openness and respect for mine employees and would do much to hasten the resolution of this dispute.

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Ms. Turmel's 2004 memo on fines and her Canadian HR Reporter column are posted on our website. Select **About Us, then **Press** to view them.*