

# Battle over union right to have courts enforce 'scab' fines heads to appeal

Colin Perkel  
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TORONTO — The power of a union to enforce solidarity in its ranks is set to come under the judicial microscope in a key test of whether the courts can be used to collect fines against members who cross legal picket lines.

The case, which goes before Ontario's highest court this month, involves two unionized tax department employees who agreed to work during a strike by the Public Service Alliance of Canada in 2004.

"These members sided with the employer against the union," said Betty Bannon, national president of the 26,000-member Union of Taxation Employees, which is part of the alliance.

"It's so anti-union. I can't even think of anything worse for somebody to do than to scab."

Citing its constitution, the union fined the two members \$476.75 for each day they refused to strike - about 200 others were similarly fined - and went to small claims court to collect.

The Ontario Superior Court ruled last fall, however, that the fines were punitive, unreasonable and designed to threaten members to honour picket lines, and were therefore legally unenforceable.

The union will contest that ruling before the Ontario Court of Appeal on May 14.

One of the employees in the case is Jeff Birch, then a software-testing analyst with Canada Revenue Agency in Ottawa who became disillusioned after four days of picket duty.

Feeling financially stressed, Birch defied his union, agreed to work and was paid his regular salary.

"They kept threatening to take me to court and fine me," said Birch, who claims the union still owes him \$150 in picket pay. "(But) my loyalty lies with my employer, not with the union."

Opponents of organized labour say the case speaks to much larger and divisive ideological questions of how much power unions should have over dues-paying members and how those dues are spent.

Groups such as LabourWatch and the National Citizens Coalition, once led by Prime Minister Stephen Harper, want governments to legislate a right to cross picket lines and to make it clear members don't have to pay fines levied by their unions.

"Union members want to go back to work (but) they're threatened, they're told they can't go back to work," coalition president Peter Coleman said.

"Then the union turns around and bullies them and uses their money - their forced dues - to fight them in court. This to me is an abuse of the process."

The coalition is raising money for Birch and colleague April Luberti, also fined by PSAC, to help defray their legal costs.

In a similar case, the provincial court of Alberta ruled in February that the Telecommunications Workers Union was wrong in trying "to give the authority of law" to union discipline by using the justice system to collect fines from three Telus employees who crossed picket lines in 2005.

PSAC national president John Gordon said taking legal action to collect fines from members is a rare but necessary step.

"They get the benefit of the collective agreement, so they ought to be standing behind the bargaining team and the efforts and the energy and the costs associated with doing the bargaining process," Gordon said.

But Birch freely admits he has little time for unions, which he brands a "corrupt little business" that protect incompetence and dead wood.

"I wouldn't give them the time of day," he said.

If the Appeal Court rules against the union, Bannon said there are other ways to collect fines, including using collection agencies.

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