

Courts won't enforce PSAC fines

Ruling in favour of members who crossed picket lines sets precedent in Ontario

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The Public Service Alliance of Canada cannot force its members to pay hefty fines for choosing to go to work and get paid while their colleagues are on strike, the Ontario Superior Court of Justice has ruled.

The ruling, which responds to the first attempt by any Ontario union to take its members to court to collect fines, raises serious questions for organized labour groups trying to prevent their members from crossing picket lines.

According to the decision released by Justice Robert Smith late Wednesday night in the case of Jeffrey Birch and April Luberti vs. the Union of Taxation Employees Local 70030, fines imposed by labour unions are not enforceable by the courts in Ontario.

The ruling sets a precedent and will act as a hurdle to future legal action by any union that tries to collect fines from members, said John Craig, a labour law expert with Heenan Blaikie, the Toronto law firm that represented Mr. Birch and Ms. Luberti.

"I think many trade unions have these kinds of provisions in their constitutions and they were hoping that they would be able to resort to the courts to give it teeth," said Mr. Craig.

"They were looking to the courts to be their enforcer. As Justice Smith said, 'The courts are not going to do that.' They will not step in and enforce these penalties."

The decision may put to rest a three-year battle between PSAC and more than 200 of its members.

Following a strike in October 2004, PSAC fined hundreds of its members who went to work. The fines amounted to one day's gross pay for each day the employee didn't show up to picket. Mr. Birch and Ms. Luberti were fined \$476.75 each.

Members were also given one-year suspensions for each day they didn't turn out to protest. The suspensions prevent them from running for an executive position or voting on union issues.

The union had argued that the fines reflected damages suffered by the union as a result of having members cross picket lines instead of striking.



CREDIT: Vancouver Sun photo by Stuart Davis.

PSAC members Christine Dockman, right, and Picket Captain Maria Duran, left, stand on the picket line outside Sinclair Center in downtown Vancouver. Behind them are other government workers from PIPS (Professional Institute of Public Service) that were asked to wait to cross the picket line. They did so in groups of 3 or 4 people.

In his ruling, Judge Smith called the fines "extremely onerous" and "very unfair." He said there was no way for PSAC to accurately determine damages suffered by the union as a result of having a member cross the picket line.

"The union further submits that the penalty imposed is reasonable because it represents a trivial sum compared to the bargaining unit as a whole," the decision adds. "There is simply no evidence of this assertion and it cannot support a finding that the amount of the fines is reasonable and fair ... the imposition of a fine and penalty equal to the gross income earned by any employee is unconscionable in the circumstances, making the penalty unenforceable."

Judge Smith also cited the Canada Labour Code, which protects a person's right to work, and questioned the need for the financial penalties. He suggested the union could raise strike pay to entice members to walk the picket lines and do a better job of educating workers about the harm caused by those who choose to work during a strike.

Each PSAC member walking the picket line earned \$50 a day.

Ed Cashman, PSAC's regional executive vice-president for the national capital region, said he didn't agree that strike pay should be increased. He said the union has contingency funds for people who find themselves in trouble financially during a strike.

"I agree that we need to inform our members better," Mr. Cashman added. "You need to give your members information throughout the course of the year and all through mobilization. Let them know what's going on."

Mr. Cashman said PSAC was disappointed with the decision, but noted that Judge Smith did not say the union cannot assign the fines. Mr. Cashman said the union will continue to collect fines from members willing to pay.

"We've got a good track record of members who are fined and actually pay voluntarily," he said. "We don't have to resort to the courts."

Mr. Cashman said lawyers for PSAC had not yet determined whether they would recommend an appeal.

Wayne Samuelson, president of the Ontario Federation of Labour, said the decision could have wide-ranging effects for unions across the province.

"Ultimately if a decision like this stands in the courts ... I guess unions will be forced to deal with the fact that if they have the fines in there they can't enforce them," he said. "They will have to look at other options. I'm not sure what they would be. We would have to live by the law."

Mr. Samuelson added that people don't often choose to break ranks with fellow union members and cross picket lines. The PSAC strike in 2004 affected about 125,000 union members, yet only a small fraction went to work.

PSAC's fines were introduced after a major strike in 1991. Some workers called for the union constitution to be amended to allow fines because they were frustrated with others who wanted to go back to work.

News that the fines are essentially non-enforceable comes when the union at the centre of the case - the Union of Taxation Employees - is in the middle of trying to negotiate a new contract. The contract expires Oct. 31.