

Union can't enforce fines, top court rules

Decision strips ability to discipline members: expert

By Vito Pilieci, The Ottawa Citizen, May 9, 2009

OTTAWA — Unions in nine of Canada's 10 provinces cannot use the court system to collect fines from their members, according to a Supreme Court of Canada decision issued Thursday.

The court slammed the door on an appeal from the Public Service Alliance of Canada that was trying to overturn an October 2007 decision by the Ontario Superior Court.

The Ontario Superior Court ruled that the union cannot use the courts to enforce fines against its members — a disciplinary measure employed by many unions.

John Gordon, PSAC's national president, said the union was disappointed with the Supreme Court's decision. He is to meet with other union executives to discuss how disciplinary issues would be addressed in the future.

"We felt the judgment that was passed before was wrong. But, obviously, we can't take this any further," Gordon said.

The disciplinary heart of PSAC's union constitution is made up of fines that are levied against members who refuse to walk the picket line during a strike and instead go back to work and receive pay. Many other unions across Canada employ similar fines to deter strike-breakers.

"They have lost a significant institutional check in ensuring solidarity with their members," said Michael Lynk, associate dean of law at the University of Western Ontario. "It's virtually impossible for a union to enforce a penalty clause in a union constitution or bylaw."

The Supreme Court decision not to hear PSAC's case has wide-ranging effects, as no union within Canada, excepting those in Saskatchewan, will be allowed to use the court system to collect fines.

Saskatchewan's provincial government passed legislation allowing for the collection of the fines.

PSAC's fines are equivalent to one day's gross pay for each day the employee went to work instead of striking. Members are also suspended from the union for one year for each day they didn't turn up to strike.

The fines were introduced after a major strike in 1991. Members called for the union constitution to be amended to allow fines after growing frustrated with co-workers who wanted to return to work instead of walking the picket line.

PSAC said members stand to lose out on group insurance rates as well as voting rights if they choose to return to work and accept pay instead of striking.

“It’s a relatively minor club that the union holds in its hand to enforce discipline,” said Lynk. “The big stick they would have is the ability to fine and that has been taken away from them.”

The only way a union can now collect the fines is on a voluntary basis. Gordon said he has had success in collecting fines in such a manner.

“We have a number of members who have been given the penalty or the fine and they have paid it,” said Gordon. “Members do actually regret their actions. It was only last week I got a letter from a member who paid the fine and regretted going into work and crossing the picket line.”

The Supreme Court decision has finally put to rest a five-year battle between PSAC and more than 200 of its members who sidestepped picket lines and worked during the federal government strike in October 2004.

Two of those workers, Jeff Birch and April Luberti, retained a lawyer and fought the fines.

Aside from dismissing PSAC’s appeal, the Supreme Court also ordered the union to pay all court costs incurred by Birch and Luberti over the past five years.

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