

Union sues its own workers

John Mortimer

Financial Post

Thursday, November 09, 2006

In any battle involving expensive lawyers, the victims are most often those with the shallowest pockets. The current war between members of the Telecommunications Workers Union (TWU) and union lawyers (funded by forced dues) is no different.

This month, the TWU starts taking Alberta Telus employees to small claims court. These employees crossed picket lines during last year's four-month Telus strike, resulting in a myriad of fines. To date, the union brass has pursued collection through its internal "kangaroo courts." It's now trying the "we'll-see-you-in-court technique" to pressure members to pay up.

Let's consider the background to what led to thousands of employees to defy their union and work during the strike. After almost half a decade of contract negotiations in which union leaders refused to submit any Telus offer to unionized employees, the company imposed its last offer in July, 2005.

Ignoring democratic practice, TWU executives ordered employees to the barricades without a strike vote on any offers after January, 2004. The union's internal civil war became public when unionized Alberta Telus employees (whether TWU members or not) crossed picket lines at the beginning of the strike and grew to about 3,100 (or almost 60% of unionized employees) in Alberta by the end. In Ontario and Quebec, all 3,000 unionized employees worked throughout the strike; the TWU ignored them, at least for now. (Telus ran its B.C. operations with management and did not open the doors to unionized employees.)

As to why many employees defied the union, here's a glimpse: One employee wrote to The Edmonton Journal to say that while he twice gave his personal information to a shop steward and instructed the steward to inform him of a strike vote, no such notification ever came. And, "Every interaction I have had so far with the union has been a runaround or a deception, right down to the sandwich boards claiming that we are "locked out."

After the strike, the infighting worsened. Internal union documents leaked to labourtalk.org include trial board decisions and financial statements; they show the union heavily in hock to other unions. Several writers on labourtalk.org also note how the union has long refused to provide them with financial statements, contrary to the Canada Labour Code.

Meanwhile, some attempted to oust the TWU president, Bruce Bell, courtesy of a non-confidence vote in March. That didn't succeed, but Bell was finally turfed in August after being convicted in a union trial for dereliction of duty. Some allege Bell didn't abide by the union's own constitution. He appealed and won, but the executive committee won't allow him back.

But even if the union is correct, Bell wouldn't be the only TWU executive to ignore critical documents: In its attempt to collect fines through civil courts, remaining union executives have disregarded legal precedents.

When the TWU served legal notices to the three Telus employees, it amounted to an attempt to intimidate and bluff members into paying. But higher courts have consistently refused to act as fine collectors for unions. In fact, the Public Service Alliance of Canada (PSAC), another union, said in 2004 that its own legal opinion "clearly and unambiguously" showed that "we have no legal ability to enforce the collection of fines, and would lose any legal action at more senior levels of the justice system." But, like the TWU, PSAC uses its own members' dues to continue suing them anyway.

As for the TWU, it even posted a proclamation and cases on its Web site, which claim to be "examples of four cases where union fines have been upheld by Canadian courts." Mysteriously, the word "fine" does not appear in the referenced cases. But the TWU likely assumes that few Telus employees will read those wrongly referenced cases, let alone fully understand them, unless they retain lawyers.

Critically, in a small-claims court action, an employee can be served with a notice and if they don't show up in court to defend themselves, the plaintiff (the union) may win by default. It may not matter that the union doesn't have a legal leg to stand on. While the three Alberta Telus employees are fighting back with lawyers, not every union member will choose to fight.

There are two remedies which would directly protect employee rights in future labour disputes.

First, labour laws should be changed so a percentage of union dues are set aside for a legal fund for employees, to be tapped by union members to directly challenge union actions by using legal counsel. Right now, any union member who tries to challenge unfair union treatment or illegal union practices might be intimidated into backing down, and/or unable or unwilling to finance it unless they find pro bono representation.

Second, the three employees should oppose the TWU in Alberta's courts. After the judge reminds the union that courts don't collect fines on their behalf, the employees should request the judge order the following: that the TWU remove its false and misleading claims about union fines from its web site, and issue a formal apology and correction to all other members. The judge might also order a remedial class in ethics for the TWU (and add in PSAC) for good measure.

John Mortimer is president of the Canadian Labourwatch Association.