

No right to fine

Unions violate human rights when they fine strikebreakers

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Once again, a Canadian court has ruled against the intimidating tactics unions use to thwart the human rights of unionized employees. This time, it's the Public Service Alliance of Canada (PSAC) fining members for exercising their legal right to cross picket lines and perform their jobs during a strike.

Calling PSAC's fines "very unfair," "extremely onerous" and "unconscionable in the circumstances," the Ontario Superior Court of Justice issued an order preventing any Ontario court from enforcing collection. The court called aspects of the union's case "pure speculation" with "no evidence," and further ruled that the fines were used "in terrorem." Translation: "as a warning; in order to terrify others."

But PSAC remains undaunted and vows to continue to levy fines. Executive vice-president Ed Cashman proudly claims, "We've got a good track record of members who are fined and actually pay voluntarily. We don't have to resort to the courts." But that "good track record" really only demonstrates that union threats are sufficient to frighten employees into paying - even though the law is on their side.

Since 1986, unionized Canadians who have been fined and sued by unions have won court cases against their unions when properly represented by labour lawyers. But these losses haven't stopped the dishonest union strategy of fines and threats of court action if they don't pay "voluntarily."

Lawyers from Heenan Blaikie, representing PSAC members Jeff Birch and April Luberti, won the current case in a higher court. In contrast, unions have only "won" in small claims court when intimidated employees didn't show up. Such "wins" only prove the well-known axiom of small-claims court: If you don't show, you lose. Further, none of the unions' so-called "wins" in small-claims court produced written rulings on the legality of fines. In contrast, the five union losses in higher courts all resulted in clear, written rulings against union tactics.

But you wouldn't know it by listening to union claims. The TWU (Telecommunications Workers Union) currently has actions against more than 200 Telus employees who exercised their right to work during a 2005 strike. Fortunately, the law firm Gowlings is acting for these employees.

Union statements on the Internet claim: "Unions have won the legal right to fine members found guilty of doing struck work" and "the union has the legal right to fine members doing struck work, whether or not they have signed a card." Unions have never won such legal rights --and they know it.

In 2004, PSAC used union dues to obtain a legal opinion on the issue. PSAC's then-president Nycole Turmel wrote the following to her board of directors: "The PSAC has a legal opinion that clearly and without ambiguity concludes that we have no legal ability to enforce the collection of fines, and would lose any legal

action. It is imprudent and detrimental to the interests of the membership for the union to threaten fines, when we now know that they are effectively unenforceable." Yet PSAC levied fines and sued anyway.

Things are no better at the United Steelworkers of America. In the last two years, they've threatened fines, levied them and sued to garnishee the wages of employees of IKO Industries. Yet the union twice failed to appear in small claims court. The judge dismissed the cases and ordered the Steelworkers to pay costs to the three unionized employees represented by lawyers from McCarthy Tetrault. Months later, the union had still not paid these court-ordered costs.

Some unions will now look fondly at union-leader-friendly Saskatchewan, which has Canada's only statutory law to fine actual union members who cross picket lines. But according to the United Nations Declaration of Human Rights, Article 23.1, "Everyone has the right to work, to free choice of employment," and Canada's Charter of Rights, Section 6.2.b, "Every citizen has the right to pursue the gaining of a livelihood." Surely this law directly contravenes an employee's human right to work.

Saskatchewan also contravenes Article 20.2 of the UN declaration ("No one may be compelled to belong to an association"), with Canada's only labour code requiring union membership as a condition of employment. The Supreme Court of Canada (*Advance Cutting and Coring*, 2001) declared that Canadians have a freedom from forced association, including forced union membership (unless abrogating that freedom can be justified under Section 1 of the Charter).

In other words, Saskatchewan forces union membership on most unionized workers, then gives unions the right to fine members only. What a racket.

These statutory schemes and the many collective agreements forcing membership on employees violate the Charter (in the public sector) and the principles it enunciates to the private sector. These ongoing human rights violations would be illegal in more than 50 industrialized nations that more fully recognize the human rights of workers.

Saskatchewan's workers would clearly benefit by removing the union-financed NDP government in next month's election. The Saskatchewan Party should ensure that the province's laws respect the above court rulings and the human rights Canada has vowed to uphold, so that a fired or fined employee does not have to fight their way up to the high court.

It's time for governments to stop letting the union fox guard the worker henhouse. A 2002 Supreme Court decision (*Berry v. Pulley*) correctly recognized the power imbalance between unions and those they represent, stating workers have "no bargaining power with the union." Crossing a picket line may be one of the only "powers" that unionized employees have to hold unions accountable for improper/rigged strike votes, providing misleading information about employer offers or internal union power struggles leading to unnecessary strikes.

Statutory fining laws, forced union membership and replacement-worker bans are yesterday's union power tools; today, they're being unplugged by courts and legislatures around the world.

Employees like Messrs. Birch and Lubteri are standing up in court for their human rights and those of millions of unionized Canadians, and employee rights are winning. But now it's time for Canada's legislators to drag Canada's unions into the 21st century.

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