

Sask. exception in letting unions fine members

By John Mortimer, Special to The Star Phoenix May 29, 2009

Following is the viewpoint of the writer, president of the Canadian LabourWatch Association.

Not all things are equal, and recent decisions by the Supreme Court of Canada emphasize the disparity between the rights of unionized workers across Canada and those in Saskatchewan. At issue is the union practice of maintaining picket line solidarity by using fines and lawsuits against the unionized workers they represent.

Lower court judgments in Alberta and Ontario, upheld on appeal in 2008, reinforce the rights of unionized workers to cross picket lines and work during a strike. They upheld the common law that courts cannot be used to enforce discipline and collect fines by parties to a private contract.

Courts in Manitoba, as well as Newfoundland and Labrador, previously made such rulings. Since 1986, unionized Canadians who've been fined and sued by their own unions have won court cases when properly represented by lawyers who knew this.

Regardless, unions remained convinced they had the right to intimidate workers and, in their efforts to find a court that would agree, two unions applied to appeal the 2008 decisions to the Supreme Court. In early May, the court denied both applications, sending the message to unions that they can't use courts to enforce union discipline.

The message to unionized workers is that their unions can't use the courts to collect fines, except in Saskatchewan. These benefits stop at the Saskatchewan border, where unique provisions in the provincial labour code give unions the right to levy fines against their members and use the power of the court to collect.

In 1983, the legislature passed an amendment that states a union may fine any of its members who has worked for the struck employer during a strike. But the common law only allows parties to a private contract to use courts to collect debts and damages owed. So, in 1994, another amendment was passed, which makes union fines the equivalent of a "debt due and owing to the trade union." No wonder they call it the Trade Union Act.

Saskatchewan appears to be the only place in the world where statute law puts workers at the mercy of union leaders by enabling such fines by unions. This not only creates a huge disparity between unionized employees in Saskatchewan and the rest of Canada, but it creates a disparity among unionized workers within Saskatchewan. The law applies only to provincially regulated workers, not federally regulated employees working in Saskatchewan for employers such as Air Canada or Viterra.

Canadian labour law is, in part, a power-based scheme that includes certain "power tools." Unions can go on strike. Strikers can work at other jobs. Employers can lock out workers and hire replacement workers (in most Canadian jurisdictions), or let unionized workers cross the picket line to work (except in Quebec and, to some extent, in B.C.).

But what about employees? Labour laws give them no viable "power tools" to hold their unions accountable, except allowing workers to cross the picket line. The Saskatchewan statute takes away the one tool employers have to hold union leaders accountable and protest the conduct of strike votes, strikes and bargaining.

In the above court cases, employees crossed strike lines because they weren't happy with how their union leaders handled the strike vote, bargained and communicated with them. In Alberta, more than 3,000 unionized employees crossed the line during the 2005 Telus strike because the Telecommunications Workers Union (TWU) had manipulated the strike and hadn't shown them a single offer by Telus for 4 1/2 years.

Crossing the picket line gave these unionized employees the power they needed to have an impact strike support and create risk for union leaders. Consequently, their union president was removed.

Without this tool, there is little viable protection for workers from union leaders. The current duty of fair representation provisions in labour codes are, at best, a joke. Labour boards have rendered a union's duty to be so low that claims against unions are almost always dismissed.

The Saskatchewan scheme reveals how vulnerable employees are in defending themselves against unions in court. Few unionized workers are willing, let alone have the resources, to stand up for their rights against union leaders, union money and union lawyers. For most, it's easier to pay the fine.

That's why laws are needed to guarantee that a percentage of union dues go to a legal aid fund so unionized employees can challenge intimidating actions used against them by the very unions that are supposed to be their "protectors."

Saskatchewan has the worst labour code in Canada in terms of codifying the power imbalance between union leaders and unionized workers. It needs reforms that give its unionized workers the same human rights and freedoms as other unionized employees across Canada and around the world. That can begin by removing the above sections from the Trade Union Act.

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