

Section 8: Unions and the Rights of Workers

Overview

In this section, you will learn:

- the extent to which workers' rights to organize and bargain collectively and effectively are protected
- why labour laws may not protect workers effectively
- how unions help enforce labour law and negotiate other methods of resolving labour-management disputes
- to evaluate the effectiveness of grievance and seniority policy as ways of resolving disputes
- how unions inform the public and government about the needs and concerns of workers

Do workers have a right to form a union and to strike?

All Canadians have the right to refuse work by simply not accepting it in the first place or by moving to another job. Mobility rights also guarantee that individuals may seek work in any province. The fundamental right of freedom of association guarantees that individuals may form or join a group, but does it guarantee that workers may form a union? Only workers who are employees can form or join a union (see Section 4). But can all employees be members of a union?



Activity 8.1: You Be the Judge

Staff Sergeant Gaetan Delisle, on behalf of an association of RCMP officers in Quebec, challenged the federal government's power to prohibit RCMP officers from becoming members of a public service union like other federal public servants. He argued that the federal government violated his fundamental right to freedom of association. He maintained that he didn't want the right to strike, just protection and bargaining rights others got under the Public Service Staff Relations Act.

His appeal to the Supreme Court of Canada marked the culmination of a 13-year battle that saw him lose previous rounds in Quebec's Superior Court and its Court of Appeal. In the mid 1980s, Mounties were shaken by media reports, based on internal RCMP documents

released under the Access to Information Act, which revealed that RCMP superiors spied on their own members as they met informally to discuss forming a union.

Did the Supreme Court of Canada find in favour of the Mounties?

Both freedom of association and the right to refuse work are rights belonging to the individual. They do not automatically apply to any group to which the individual belongs. Statute law determines which employees may be union members. Statute law also determines who has the power to strike and under what circumstances. Since the right to strike is created by statute law and is not a constitutional right, the question becomes: Who will be given that power?



Activity 8.2

Evaluate whether each of the following occupations should have the power to strike. Use a point system in which 1 means that under no circumstances should it have the power to strike and 5 means it should have the power to strike whenever a collective agreement cannot be reached otherwise.

- (a) garbage collectors
- (b) pilots
- (c) bank employees
- (d) police
- (e) teachers
- (f) telephone operators
- (g) athletes
- (h) auto workers
- (i) restaurant workers

What criteria did you use to assign the points you did?

Are unions needed to protect workers' rights?

Labour statute law is necessary because labour markets do not deliver socially acceptable terms and conditions of employment for many workers. In practice, the employer's superior bargaining power can generally dictate a labour contract's terms. Statutes like employment standards legislation are the only way for many employees to protect their rights to minimum standards of pay and working conditions.

There are those who maintain that current labour legislation imposes too high a standard on Canadian employers who must now compete with those in developing countries where workers cost a fraction of

what they do in Canada. Others argue that the well-treated worker is a more productive worker. One thing is certain. Employment standards only have an impact if they are enforced. This does not always happen for the individual worker. Even if the employee's rights are violated, the delays and costs involved in taking the employer to court are often too much for the average employee to bear.

If a disagreement occurs between the employer and the employee, the law expects that the two will discuss the problem and try to resolve it. If this doesn't work, the employee files a claim in writing with the Employment Standards Branch of the appropriate Ministry of Labour. An officer of the Ministry is appointed to mediate. If no solution can be agreed upon, the officer finds in favour of either the employee or employer.

The federal government's Advisory Group Report (1994) found that "non-compliance" with the law by employers was "prominent." It gave three reasons. Violators were seldom caught. If caught, it was unlikely they would be prosecuted. If prosecuted, relatively small fines were the only consequence.



Activity 8.3

Government not only makes labour law, it also enforces it. The following article illustrates another aspect of the difficulty of the enforcement of laws and regulations by government agencies.

1. Read the article and explain the problem.
2. What specific programs and agencies are mentioned as examples of the problem?
3. Why is this employer and these examples of such concern?
4. Evaluate the reliability of the report on which the article is based.

Ontario civil service in crisis situation, Ombudsman warns

'Atmosphere of fear,' limited resources undermine level of service, report says

Jane Coutts

Queen's Park Bureau, Toronto

A combination of inadequate resources and fear among senior bureaucrats of reprisals by their political bosses has put Ontario's public service in crisis, the province's Ombudsman says.

Senior government officials are reluctant to fix problems or policies in their departments because they are afraid for their jobs if they confront the Progressive Conservative government, said Roberta

Jamieson, who released her annual report yesterday.

"As Ombudsman, I have witnessed the development of what I can only describe as an atmosphere of fear among public servants, where senior officials are afraid to question the wisdom of the government's approach for fear of reprisal or loss of reappointment," Ms. Jamieson said in her report.

“As a result, many of the values upon which the public service has historically relied, including the obligation to ‘speak truth to power’ even when the truth is unwelcome, have been seriously undermined.”

At a press conference, Ms. Jamieson said many senior officials understand the complaints she brings to them and would like to change things in their departments, but “are afraid to speak out, so while they may understand and accept and appreciate the results of my investigation, they are not able to take the corrective steps they might like to take themselves.”

It’s the Ombudsman’s job to identify the need for those corrective steps; the office was set up to assist members of the public who are having troubles with the provincial government and cannot get them rectified.

...

The Ombudsman also said funding cuts and a shift in the government’s values have led to a general decline in the level of service offered to the public.

Ms. Jamieson, appointed for a 10-year term in 1989, criticized the shift from an emphasis on fairness in delivery of service that governed the public service in the early part of the decade to the businesslike, bottom-line values being espoused today.

Programs designed to encourage equity – both within the public service and in the delivery of services – have come to be seen as “frills or add-ons,” sometimes because they were “reverse discrimination” or seen to serve special-interest groups, she said. ...

Ms. Jamieson singled out several government services as falling particularly short of their goals in providing service to the public: the Ontario Human Rights Commission, the Family Responsibility Office (which collects child support from absent parents) and several organizations that hear appeals from the public of decisions made by government boards or agencies, including the Workplace Safety and Insurance Board and the Health Professions and Social Assistance Review Boards.

Premier Mike Harris was quick to dismiss Ms. Jamieson’s criticism yesterday. “I have a fundamental disagreement with the Ombudsman ...,” Mr. Harris told reporters.

“Every measure of value for money spent is now showing that our public service here in the province of Ontario is more efficient, providing better service and doing so at less cost ... So I just disagree with the Ombudsman on the role and the goals and the value of public service. ...

Source: Coutts, Jane. “Ontario civil service in crisis situation, Ombudsman warns.” *The Globe and Mail*, June 17, 1999. Reprinted with permission from The Globe and Mail.

Unions try to increase wages, benefits, working conditions, and so forth for their members through the collective bargaining process. They help to enforce and improve upon the minimum working standards established by legislation. They will also try to establish their own systems that help resolve disputes between the employer and the worker and between workers. All collective agreements contain a grievance procedure.

A grievance is usually the result of an alleged violation of the collective agreement. If an employee has a complaint, the process is to go either to the immediate supervisor or to the shop steward. A shop steward is an unpaid union representative elected by fellow workers in each shop or section of a workplace to represent them. The shop steward will try to resolve the issue with the supervisor or line manager. If the employee is not satisfied, the union may ask for a meeting with the firm’s Human Resources Manager. If this fails to achieve a decision

acceptable to both sides, it is referred to the Employment Standards Branch of the appropriate Ministry of Labour. It appoints an arbitrator or an arbitration board to settle the matter. This arbitrator is an outside person knowledgeable in labour law and acceptable to both parties. The arbitrator will listen to both sides and make a decision or award that is binding on both sides.

Where there is no union, the employee must take the concern to the employer in person. If the problem cannot be resolved between them, the employee files a claim in writing with the Employment Standards Branch of the appropriate Ministry of Labour. An officer of the Ministry is appointed to mediate. If no solution can be agreed upon, the officer finds in favour of either the employee or employer.



Activity 8.4

1. Compare the steps in a grievance procedure with those the individual worker without a union must follow.
2. Which of the two systems will produce the best result from the point of view of the worker? The employer? Explain why.

The employer and the union as well as individual workers may grieve. A company might file a grievance over a work stoppage or to get a clear interpretation of an article in the collective agreement. The union might file a grievance if the concern affects a large number of its members, as it might in the example of the employees' entitlement to overtime pay.

Another provision in almost every collective agreement is the seniority clause. The term seniority refers to a person's status in a company based on the individual's length of service. Seniority helps prevent disputes by providing an objective way of determining things such as layoffs, recalls, promotions, transfers, work assignments, and vacations. Those with more service have the preference, assuming all else is equal.



Activity 8.5: You Be the Judge

Each of the following cases involves the resolution of a dispute. They illustrate the role unions and arbitrators play in the process. Read them over carefully and answer the questions at the end of each case.

Case 1: Service Employees International Union, Local 204, [and two employees] and Attorney General of Ontario (September 5, 1997)

Ontario's Pay Equity Act was passed to overcome wage discrimination against women. It created two methods of determining equitable wages. For most workers, a job-to-job method of comparison that compared wages earned by men and women doing the same or very similar jobs was used. For female workers in workplaces where there were few men for comparison (e.g., health care and social services), a method called proxy comparison was used. It compared the job classification of women to other job classifications that were judged similar in requirements and responsibilities in which men and women worked.

The proxy method was applied to 100,000 women (16 per cent of the female work force), and estimates suggested that wages for women would rise 15 per cent.

The government then passed the Savings and Restructuring Act that limited pay equity increases determined using the proxy method to 3 per cent, and the proxy method was removed as a valid method of comparison.

A homemaker, a health-care aide, and their union challenged the government.

The government argued that using the proxy method was flawed and that using it only for some workers violated the Charter of Rights (Sec. 15.1) that required all workers to be treated equally.

The union argued that the Pay Equity Act had been created as affirmative action legislation designed specifically to help the women who were now being denied that help by the Savings and Restructuring Act as specifically provided for by the Charter of Rights (Sec. 15.2)

Source: "Ontario Pay Equity Amendments Ruled Unconstitutional" originally published in *CLV Reports Public Service Review*, February 9, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

1. How would you decide this case? Explain your reasoning.
2. Why is it unlikely this case would have come to court had the women not been members of a union?

Case 2: Wellington Catholic District School Board and Wellington Separate Support Staff Association (March 17, 1998)

When the position as head secretary at a high school was awarded to the candidate who had the least seniority, the association filed a grievance on behalf of the two individuals with more seniority who were not selected. The collective agreement provided that selection would be based on the following factors: (i) skill, ability, and experience; (ii) seniority. Where the factors set out in (i) were relatively equal, factor (ii) was to govern. For seniority to be considered, the union had to show that the grievor was relatively equal to the successful candidate with respect to the required skills, ability, experience, and education for the posted position. Evidence indicated that both workers had worked for

many years in positions requiring skills in coordination and delegation. Although the successful candidate had had one year of experience in a similar position, the grievor had had eight. Evidence was also presented that the grievor had additional experience and a glowing report from her previous principal.

Source: "Candidate with More Seniority Not Selected for Posted Job" originally published in *CLV Reports Arbitration Review*, April 13, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

3. How would you decide the case? Explain your reasoning.
4. What are the advantages and disadvantages of using seniority to determine job placements?

Case 3: Loblaws Supermarkets Ltd. and UFCW, Local 1000A (May 6, 1998)

The grievor, a grocery produce clerk, was terminated from his employment after he was found to be in possession of company property that he acknowledged he had not paid for. The union challenged the appropriateness of the penalty noting that the grievor was a long-term, full time employee with a discipline-free record. He admitted to stealing both grocery items and money from a Trebor candy box.

The grievor's doctor (a psychologist) testified that the grievor was a kleptomaniac and that he perceived his situation at work to be stressful and very negative and that this had contributed to his actions. The company maintained that its policies with regard to theft were clear and consistent with labour law. A psychiatrist called by the company indicated that there was no medical evidence that the grievor was not acting of his own volition when he took the company's property.

Source: "Discharge for Theft" originally published in *CLV Reports Arbitration Review*, June 8, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

5. Was termination the appropriate and legal action for the company to take?

Case 4: Molson Breweries and Brewery Workers Component 325 (May 19, 1998)

The grievor was a maintenance mechanic who had been called by another worker to correct a problem with his equipment. When the worker insisted the grievor shut down the production line, the grievor (who attempted unsuccessfully to reach his supervisor) refused, and the worker became agitated and belligerent. The worker threw a box of metal parts at the grievor and lunged toward him. The grievor pulled out a utility knife he carried but did not menace the other worker with it and soon put it away. The worker left but returned with a piece of pipe. By this time union and management officials were present and defused the situation. Throughout the entire episode, the grievor remained calm and reasoned. Management assessed each man a two-week suspension. The union grieved, maintaining that both workers did not deserve the same punishment.

Management argued that both men received the same penalty because they each had a weapon. The union, in support of the grievor, maintained that the grievor was acting in self-defence and used the utility knife in a protective, not aggressive, manner. It presented

an eyewitness account from another worker as support. The witness declared the grievor stood calmly, even while the pipe was rested against his head and in the face of repeated taunts by the worker to take out his utility knife.

Source: "Aggressor and Target Equally Guilty in Workplace Fight" originally published in *CLV Reports Arbitration Review*, June 8, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

6. What would you decide? Did the two men receive fair punishment?

Case 5: Norton Company of Canada Inc. and U.S.W.A., Local 3696 (June 23, 1998)

The employer hired a contractor to paint offices. The work was done on three Saturdays. Two maintenance department personnel grieved that the work was improperly contracted out and that they should have been assigned the work even though they were already working overtime on two of the three Saturdays. In the past, both maintenance personnel and contractors had done painting. Recently, the company had signed a letter of understanding with the union on contracting out in which it undertook to "utilize its qualified bargaining unit employees whenever possible. Our first consideration for all maintenance work will be the availability and expertise of each of our bargaining unit employees."

The company maintained that since the work was done on the weekend, it was not subject to the letter of understanding commitment. The union maintained that if the employees were "available," even if it was a weekend, they should have been given the job.

Source: "Work Contracted Out while Employees Were Available" originally published in *CLV Reports Arbitration Review*, July 13, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

7. Why would the employer prefer to "contract out" the work rather than have it done by his regular employees?

8. How would you decide this case? Explain your reasoning.

Case 6: Foremost Industries and CAW, Local 1227 (October 7, 1998)

The company laid off 26 permanent employees and one probationary (newly hired) employee. When the layoffs occurred, nine probationary employees (out of a total of 10) continued working. The union grieved and claimed the probationary employees should have been laid off rather than the permanent employees. The employer argued that under the collective agreement, layoffs were based on seniority within job classifications, rather than on a plant-wide basis, and that it had followed the classification system.

Source: "Employer Laid Off Permanent Workers; Kept Probationers" originally published in *CLV Reports Arbitration Review*, November 9, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

9. Why might the employer prefer to lay off the permanent employees rather than the probationary employees?

10. How would you resolve this grievance?

Case 7: R.P.P. (employee) and C.A.W.-Canada, Local 4304 and The Corporation of the City of Kitchener (Intervenor) (August 6, 1998)

An employee was involved in a skirmish with another employee in the employer's lunchroom. He had a history of discipline problems that included a two-day suspension without pay for unjustified absence and dishonesty. The employer issued a four-day suspension, as well as a written warning. The employee grieved the discipline because the other employee involved in the skirmish received a lesser punishment. The employer refused his claim and the employee appealed to the union. The union refused to pursue the grievance to arbitration, which the employee claimed was arbitrary, and he filed a grievance against his union.

Source: "Union Refused to Pursue Grievance" originally published in *CLV Reports Labour Board Review*, November 2, 1998. © 1998 Carswell, a Thomson Company, used with permission. For further information on this and other Carswell publications, visit <http://www.carswell.com/>.

11. What does this case illustrate about grievance procedure that is missing in other cases?
12. If you were the adjudicator, would you believe that:
 - (a) the company's treatment of the grievor was fair?
 - (b) the union's refusal to pursue the grievor's case was the right decision?

These cases illustrate how unions serve their members. Through the collective bargaining process, they negotiate agreements with employers that enhance the workers' minimum wage, benefits, and conditions of work standards established by statute law. They help deal with disputes and ensure that laws, regulations, and contractual agreements are enforced.

Organized labour does not limit itself to matters connected with the process and outcomes of collective bargaining. Unions also play the role of political activist. They use their resources in the same way as businesses do to try to influence public opinion and promote the interests of the people they represent. They engage in lobbying and other direct political activity to influence government to adopt policies and pass legislation that is favourable to their members. In this respect, the Canadian Labour Congress (CLC), the Canadian Auto Workers (CAW-Canada), or the Canadian Union of Public Employees (CUPE) performs the same role as the Business Council on National Issues (BCNI), the Canadian Chamber of Commerce (CCC), or the Canadian Federation of Independent Business (CFIB).



Activity 8.6

Identify and compare the particular political concerns, policies, and programs that business and labour support. Go to the web site of any of the representatives of business or labour and analyze what you find. Conducting a search using “Canadian business associations” will reveal the large variety that exists. Labour organizations maintain many sites. Start with the CLC, the CAW, or CUPE. Links on these web sites will take you to many more.

Use the following headings to create a chart to compare the business and union web sites:

<u>Organization</u>	<u>Who It Represents</u>	<u>Major Concerns</u>	<u>Programs/Activities</u>	<u>Other Points of Comparison</u>
---------------------	--------------------------	-----------------------	----------------------------	-----------------------------------