Our Rights Under The Law

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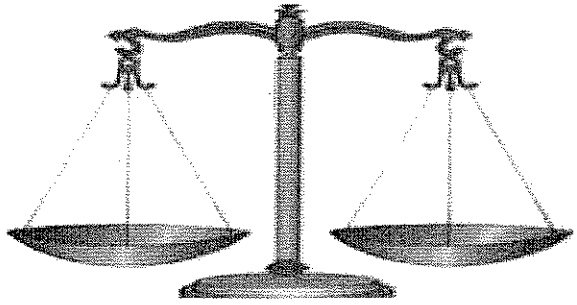

Depending on where they work, PSAC members may be covered under one of a number of different labour laws. Members who work in federal government departments and agencies are covered by *the Public Service Labour Relations Act* (*PSLRA*). PSAC members who are employed elsewhere in the federal sector, including non public service employers in the three Territories, fall under the *Canada Labour Code.* Still other PSAC members work in employment situations that come under the jurisdiction of provincial private sector or territorial public service labour legislation.

Despite the different labour laws that apply to PSAC members, the same basic union rights are recognized and protected in each piece of legislation. Following are brief descriptions of these important rights.

THE RIGHT TO JOIN A UNION

Under the law, the right of an employee to join a union is guaranteed. Here are some examples of how this right is spelled out in law:

Canada Labour Code, Part 1, Section 8 (1)

Every employee is free to join the trade union of their choice and to participate in its lawful activities.

Ontario Labour Relations Act, Section 5

5. Every person is free to join a trade union of the person's own choice and to participate in its lawful activities. 1995, c. 1, Sched. A, s. 5.

Quebec Labour Code

3. Every employee has the right to belong to the association of employees of his choice, and to participate in the formation, activities and management of such association. R. S. 1964, c. 141, s. 3; 1977, c. 41, s. 3.

In summary, each employee has the right:

a) to be a member of a union
b) to participate to union activities and
c) to participate in the formation of a union

THE RIGHT TO PARTICIPATE IN UNION ACTIVITIES

The previous examples show that the law not only protects a worker's right to join a union, but also recognizes the worker's right to be an active union member.

Many of us have probably met or known members who do not want to get involved in the union. Some of the reasons why they do not want to be active include:

- fear that their employer, or manager, might prevent them in some way from being promoted;
- fear of presenting a grievance because they might be fired;
- fear they might get a reputation as a complainer; or
- fear of disturbing a friendly relationship with management.

These are some of the major fears and concerns members have about active union involvement. At one time, these were legitimate. Management could retaliate against union activity without fear of any legal restrictions. Today, however, the law protects employees from employer interference by prohibiting "unfair labour practices" on the part of management. Some examples of these outlawed practices include:

(i) interference in the formation or administration of a union Local;

(ii) interference with the union representing its members;

(iii) discrimination because of union activity.

(iv) intimidation, threats, or penalties meant to discourage union activity.

Most labour laws contain similar provisions. Here is an example from the *Public Service Labour Relations Act*:

Unfair labour practice - employer

186 (1) Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or

(b) discriminate against an employee organization.

(2) Neither the employer nor a person acting on behalf of the employer, nor a person who occupies a managerial or confidential position, whether or not that person is acting on behalf of the employer, shall

(a) refuse to employ or to continue to employ, or suspend, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or

intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,

(ii) has testified or otherwise participated, or may testify or otherwise participate, in a proceeding under this Part or Part 2,

(iii) has made an application or filed a complaint under this Part or presented a grievance under Part 2, or

(iv) has exercised any right under this Part or Part 2;

(b) impose, or propose the imposition of, any condition on an appointment, or in an employee's terms and conditions of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2; or

(c) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from

(i) testifying or otherwise participating in a proceeding under this Part or Part 2,

(ii) making a disclosure that the person may be required to make in a proceeding under this Part or Part 2, or

(iii) making an application or filing a complaint under this Part or presenting a grievance under Part 2.

These are the major prohibitions relating to employers that are specified, in one form or another, in most labour laws. Some laws not only contain these basic restrictions, but also identify other types of activities that are to be considered unfair labour practices. The *Canada Labour Code*, for example, makes it an unfair labour practice for an employer, or manager, to take disciplinary action against an employee, because s/he refuses to perform all or some of the duties of another employee who is participating in a legal strike.

The following kinds of actions might be leading indicators of a pattern of discrimination:

- assigning you more than your fair share of dirty work;
- taking away the more interesting parts of your job;
- suddenly hassling you about how long you take for lunch while continuing to be flexible about other people's lunch breaks;
- suddenly giving you too much work;
- suddenly giving you too little work;
- deciding that your job performance is no longer satisfactory even though it hasn't changed;
- refusing to promote you because you spend too much time on union business;
- complaining that you file too many grievances;
- threatening to discipline you if you continue to be involved in the union;
- noting in your personal evaluation that your job performance is affected by your union involvement.

We all want to have a good working relationship with our managers. However, if the price of that relationship is to deny our rights or refuse to exercise them for fear of upsetting the boss, then surely we are not getting a fair deal. Well-trained, competent managers recognize that employees have certain union rights. They do not feel personally threatened by the existence of the union. Also, they know better than to waste their time trying to stop employees from being active in the union, and instead, channel positive energy into developing respectful relations with union representatives.

THE RIGHT TO GRIEVE

The end result of collective bargaining is a new or revised collective agreement which sets out employees' rights on the job. This is not the end of the collective bargaining process however. Now the employees have to make sure the collective agreement works!

Having a collective agreement does not mean that the employer will always abide by it. In fact, it is not uncommon for management to completely ignore provisions of the collective agreement or to interpret those provisions in such a manner as to effectively deny employees their rights. Management, for example, may decide an employee is not entitled to overtime pay under the terms of the collective agreement. When this happens, i.e., when the union and management disagree about how the collective agreement is to be interpreted or applied, then there is cause for a grievance. Simply stated, a grievance is a complaint in writing against the actions or lack of action of the employer in matters respecting employees' terms and conditions of employment. The grievance is the means by which we protect our rights under the collective agreement. It is the redress available to us when the employer "breaks" the contract.

The right to grieve is a legal right. Different labour laws, though, may define the right in different terms. The *PSLRA*, for example, explicitly defines the right to grieve and the different types of grievances. It also specifically describes the circumstances under which the right to grieve may be legally exercised and the circumstances where grievances cannot be presented. This has the effect of placing limitations on the right to grieve. The *Canada Labour Code*, on the other hand, contains a general provision requiring the parties to a collective agreement to negotiate a provision for final settlement, without stoppage of work, of all differences between the parties during the term of a collective agreement. The negotiated provision is in fact a grievance procedure.

Union members sometimes hesitate to make effective use of the right to grieve. They may view the grievance process as being something that nice people don't do or as being unfair to management. Neither concern has much

basis in fact. The grievance procedure is designed so that decisions can be challenged based on objective facts, not on personalities. Challenging decisions is a healthy and normal activity in our democratic society. It is a check on the system to ensure that decisions are just and fair. To preserve our democratic principles we are obliged to challenge decisions whenever these result in unfair or unequal treatment.

Management itself is well served by the grievance procedure. First of all, management has the initial right to make the decision on how they will apply the collective agreement. If the union, or the employee, does not agree with this decision, a grievance can be filed. Before grieving, however, the employee first must comply with management's decision. Once the grievance is submitted, at each step in the grievance process both parties have equal opportunity to explain the reasons for their actions. Should the grievance end up at arbitration/adjudication for final and binding settlement by a neutral third party, then again each party has equal opportunity to represent their case. The whole system of grievances and arbitration/adjudication reflects our wider system of justice. The parties concerned are entitled to the same rights to a fair hearing. These facts dispel the notion that the grievance process is unfair to management. It is more than fair!

When employees challenge violations of the collective agreement or violations of other job rights, they act positively to protect their rights. They stop management in any attempt to bypass or break the contract. They take control of their working lives.