RESEARCH - ANALYSIS - SOLUTIONS

CCPA REVIEW

Labour Notes

July 2008

How Important are Labour-Friendly Laws to Manitoba's Unions?

Assessing the Supreme Court's B.C. Health Services Decision

The recent Supreme Court decision in the B.C. Health Services case has been heralded as great news for Canadian labour. In January 2002, the Liberal government of B.C. enacted the Health and Social Services Delivery Improvement Act. The Act overrode major portions of existing collective agreements by significantly changing working conditions, permitting contracting out of bargaining unit jobs, weakening job security, and exempting employers from obligations that had been negotiated into collective agreements. As the devastating impact of these changes became clear, workers resisted with a province-wide strike in the spring of 2004. Legislated back to work, they defied the government briefly before taking their case to the courts. In June 2007, the court ruled against the province of British Columbia, finding that the Act violated the workers' rights under the Canadian Charter of Rights and Freedoms by infringing on their right to collective bargaining.

The court's ruling was a landmark decision that defined collective bargaining as a fundamental right protected by the Charter of Rights and Freedoms. Calling the right to collective bargaining a "fundamental aspect of Canadian society" that "affirms the values of dignity, personal autonomy, equality and democracy," the court broke new historical ground by extending constitutional protection to unions.

But important though this court decision is, legal decisions like this one will not make the labour movement stronger. The dynamic works the other way. Good labour laws don't make strong unions; strong unions make for better labour laws. The history of our labour relations system makes this very clear.

The Roots of Canada's Labour Laws

Canada's labour relations structure is rooted in legislation and court decisions, many of them favourable to labour. During and immediately after World War Two, these legal structures secured basic union rights, affirming workers' right to join unions and obliging employers to respect legally certified unions and participate in collective bargaining. They are, in effect, the foundation of the Canadian labour relations system, and generations of labour experts have credited the courts for their role in creating a system that works so well to protect labour rights.

The Review is available free from the Canadian Centre for Policy Alternatives. Each issue features new independent research and analysis on topics important to Manitobans. For more information or to provide feedback please call or write:

309 - 323 Portage Avenue
Winnipeg, MB R3B 2C1
ph: (204) 927-3200 fax: (204) 927-3201

From its inception, however, this system has had inherent problems. These were not as apparent in the 1970s and 1980s, when Canada had a strong economy and relatively high wages and benefits. But over the last two decades, as the voluntarism that was an essential part of the system has been stripped away, its flaws are becoming more apparent. It is increasingly clear that a labour relations system that relies on the law and the courts faces significant problems adapting to current economic and political changes.

Our labour relations system was modelled on the US National Labor Relations Act, or the Wagner Act, passed in 1935. Canada's labour legislation was less progressive at the time than that in the US. PC 1003 was enacted nine years after the Wagner Act and was less aggressive in its protection of labour rights. It would be naive to assume that the law was created simply to protect organized labour. On the contrary, it was a largely successful attempt to quell the widespread discord that had erupted in strikes across the country over the previous three years. Over a million worker days were lost to strikes in 1943 alone. Uninterrupted production was particularly important to capital during the transition to a peacetime economy. Consequently, when the war ended, PC1003 was replaced by the federal Industrial Disputes Investigation Act [1948] and over the next few years by provincial labour laws.

Unions acquired further legitimacy and security from the Rand formula. A 1946 arbitration decision by Supreme Court Justice Ivan Rand in the fractious strike at Ford's Windsor plant established two important precedents. First, Rand ruled that the union was entitled to collect dues from all the workers in the bargaining unit. Rand concluded that even non-union members should pay dues because they derived the benefits of unionization. Secondly, he ordered that dues should be checked off by the employer and remitted to the union. Ontario Labour Minister David Croll called the Rand decision "a great milestone in the development of labour-management relations" and "a resounding blow for the advancement of labour's rights."

This combination of labour law and court precedent is sometimes referred to as the postwar compromise. This name hints at the trade-offs that were part of its origins, most of them, as usual, made by labour. In principle, employers had to accept the existence of unions and, sooner or later, they had to negotiate with them. In return, employers got labour peace and unions got unprecedented stability and security. But that security came at a price. Unions were tamed, reigned in by the very legislation that empowered them. Integrated into the political structure of the state and with a complex set of legal rights and obligations, unions began to see themselves as partners with capital rather than its antagonists. Labour leaders were no longer militants; they were statesmen. These leaders were not, on the whole, the same people who had founded these unions in the 1930s. Militant unionists, many of them Communists, had organized the workers in the mass production industries that, in their day, had been widely considered to be unorganizable. They led the strikes that prompted government to forge the postwar compromise. But under the new regime, most of these activists were purged from the labour movement, not only because of their left-wing political views and affiliations, but also because they remained unrepentantly militant.

The new leaders, on the other hand, were eager to avoid conflict. Having acquired the approval of the political establishment, unions became part of the mainstream. Legally certified unions were entitled to an array of rights, including the right to strike and to bargain with employers on behalf of their members. But their right to strike was severely restricted. Under the terms of the compromise, unions could no longer engage in mid-contract strikes and sympathy strikes. Yet this kind of rank-and-file militancy was precisely what had prompted the legislation that now constrained them. Public sector workers used illegal strikes in the 1960s in a similar manner to win legal rights, specifically, the right to bargain collective and, in some provinces, the right to strike. But this exception proves the rule. Except in unusual, indeed, historically significant, circumstances, industrial conflict was strictly contained and, aside from strikes supporting contract bargaining, channelled into bureaucratic processes.

Canada's unions were also influenced by events in the U.S. Labour-friendly policies were eroded by a strong American business lobby and not defended by an increasingly conservative American Federation of Labour (AFL), which had purged its left-wing activists in compliance with the 1947 Taft-Hartley Act. U.S.-based international unions pressed their Canadian affiliates to avoid conflict with employers for the following decades.

Under the postwar regime, unions were committed to maintaining industrial harmony. This created a fundamental conflict. To bargain good contracts, they needed a membership that would support a legal strike strongly by demonstrating solidarity and resolve on the picket line. But aside from these rare occasions, they were responsible for stifling militancy, undermining the kind of labour militancy that had won those rights. Unions, not management, were responsible for maintaining a disciplined workforce that adhered to the provisions bargained in the contract. This effectively required them to police their own members. Members prone to shop floor agitation were no longer an asset to the union; they became a liability. Rank-and-file activism had to be firmly controlled, and unions began to see rank-and-file participation as more trouble than it was worth. Rank-and-file activists were amateurs, and increasingly, union work required experts. Administering collective agreements, processing grievances and bargaining became too complicated for ordinary members who lacked specialized skills. Over time, unions acquired a layer of professional staff who provided high-quality services to members but further separated them from the activity of the union.

Contracts also began to include management rights clauses in which unions relinquished any claim to a voice in the work process. And perhaps most significantly, unions ceased to be organizations for advancing social justice, broadly conceived, and became institutions for advancing the specific interests of their own members.

Unions as Social Movements

In the 1930s and 1940s, industrial unionism was a social movement. The organized labour movement was at the forefront of progressive grassroots politics. Unions mobilized members of the workplace as well as the wider community around issues of wide popular concern. The organized labour movement played a pivotal and highly visible role in the postwar struggles that forced governments to create Canada's social safety net. Some of the most significant struggles were for universal medicare; publicly funded, universal old-age pensions; universal education through secondary school without fees; affordable university and college education; income support programs, and unemployment insurance, including unemployment insurance for married women, which was a battle on its own. Unions also called for lower food prices, maternity leave and better, more affordable child care. Canadians got most of these polices and programs largely because popular social movements led by organized labour struggled for them. Clearly, the labour movement was a relevant and important part of the community, not an institution representing special interests.

This kind of unionism is much more difficult when, to be effective, unions must be responsible institutional citizens. The demands of running large bureaucratic organizations and the importance of providing high-quality services to members leaves little scope for unions to be active in social movements. Teamsters and turtles may have come together briefly in the Battle in Seattle, but unions do not play a major role in any social movements. The primary expression of union support for social justice is in the United Way, social justice funds and humanity funds. These donations are significant, with unions donating hundreds of thousands of dollars annually to many worthy causes. But the proportion of union budgets designated for social movement activity is dwarfed by the amount spent servicing members. The relatively minor role of unions in social justice movements reinforces the popular view of unions as a special interest group.

The focus on services to existing members also conflicts with the imperative to organize. Unions in Canada have actually done proportionately better than those in many other jurisdictions. Between 1970 and the late 1990s, as many as two percent of non-union workers have been organized by new certifications. But since the late 1990s, new organizing has declined to only one percent a year, insufficient to stop the overall decline. Although union density in Canada has not declined as alarmingly as in the US, where it is now 13.4 percent, there is cause for concern. Unionization in Canada has declined from over 37 percent in 1981 to just over 30 percent in 2007. Twenty-five percent of unorganized workers report that they would prefer to be in a union, suggesting that there's an untapped demand for unionization. But the structure of unions under the current regime does not position them well to tap this demand. Weak labour-friendly laws are a major obstacle to new organizing. But as history demonstrates, labour-friendly laws are the result of labour mobilizing, not the other way around.

Labour experts argued persuasively that unions have lost much of their militancy and with it much

of their relevance. As long as employers more or less respected the compromise, unions could bargain good wages, benefits and working conditions for their members. But reliance on the laws and the courts has not prepared unions for the new realities of the post-industrial economy, with its increasingly diverse workforce, footloose employers and precarious service-sector jobs.

Labour-friendly Governments

Workers cannot count on labour-friendly governments to pass good legislation. Saskatchewan, where the newly-elected Saskatchewan Party has put eviscerating labour laws at the top of its agenda, is a case in point. But even supposedly labour-friendly governments have consistently failed to ensure that workers' rights are adequately protected. After their election in 1999, Manitoba's NDP restored some of the protections that had been cut from the Labour Relations Act by the Conservatives. But the law still lacks many of the basic protections that would level the playing field and allow unions to organize without undue interference by employers. The high threshold for automatic certification (65 percent) and the absence of unjust dismissal and anti-scab legislation are obstacles to workers who would like to join a union but fear employer reprisals if their intentions are discovered.

Community Unionism

In the past, it was possible to compel governments to pass laws that protected workers and helped them organize unions because there was a socially active labour movement. These unions helped define the goals of public policy in ways that included improving the lives of ordinary working people. Coalitions of labour and social movements could hold governments' feet to the fire when their policies were too biased toward employers. Unions that were seen as legitimate members of their communities were able to promote the notion that good wages and benefits were evidence of a strong economy, not luxuries that had to be foregone in the interests of economic growth.

The postwar accord was a compromise from the outset, but the extent of labour's trade-off has become clearer over time. What unions gained from good labour laws is important, but to remain relevant and protect those gains, unions also need to tap rank-and-file militancy. Unions need good legal counsel, but they also need to know when to reject good legal advice and adopt a less safe but more militant position. To regain lost ground, unions need to organize the unorganized. Without a strong labour movement that nurtures close ties to the rest of the community, we have little hope of getting laws that will advance those goals.

Julie Guard
Labour Studies Program, University of Manitoba

The Canadian Centre for Policy Alternatives is an independent non-profit public policy research institute. For information about publications or forthcoming events, or to become a member please phone or write:

309-323 Portage Avenue
Winnipeg, MB R3B 2C1
ph: (204) 927-3200 fax: (204) 927-3201
ccpamb@policyalternatives.ca
www.policyalternatives.ca

CAW 567 OTTAWA