

Managing a Labour Dispute

Picketing and Injunctions

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Agenda

- Planning for a Labour Dispute
- Preparing for Picketing
- Police Support in Labour Disputes
- Possibility and Power of Injunction
- Principles in Practice

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Planning for a Labour Dispute

- Why is it Important?
 - 1) To ensure established levels of service are maintained
 - 2) To safeguard corporate property and facilities
 - 3) To protect employees, customers and the public
 - 4) To minimize damage to employee relations
 - 5) To enable quick resumption of services

- How do I prepare?
 - Develop a Strike Response Plan

Strike Response Plans

- Assess Priorities

- Develop Procedures for Legal and Illegal Strikes

- Assign Roles and Responsibilities
 - General Manager
 - Executive Committee
 - Human Resources Coordinator
 - Security Coordinator
 - Other Coordinators

Overview of Picketing

- Picketing may accompany strikes
- Picketers generally have the right to peacefully demonstrate
- Non-peaceful demonstrations are generally prohibited
- Picketing can be either **Primary** or **Secondary**

Primary Picketing

- Definition:
 - Picketing that takes place at your work site
- Can I exclude picketers from my business?
 - Generally, **Yes**
- Are picketers able to stop or obstruct traffic?
 - **No**, though brief delays (5 minutes) might be allowed

Secondary Picketing

- Definition:
 - Picketing at other locations than the premises
- Is secondary picketing allowed?
 - Yes, as long as not engaged in criminal or tortious conduct
- What about picketing at my home?
 - Likely **Not Allowed**

Picketing Protocols

- Definition:
 - A voluntary agreement with the union on the rules of picketing
- Purpose:
 - Helps to ensure the demonstrations remain peaceful
- Common Provisions:
 - Location where picketing permitted
 - Length of traffic delays allowed
 - Limits on number of picketers
 - Prohibitions on violence and intimidation

Police Support

- The Role of the Police:
 - To ensure public safety

- When should I involve the police?
 - Contact before labour issues arise, to become aware of any special resources or procedures

- Who should I call?
 - Life or death situations: Dial 911
 - “Minor” Disturbances: Call your local police contact

Introduction to Labour Injunctions

- What is an Injunction?
 - A court order to do, or to refrain from doing, something
 - Restrain picket line conduct and regulate picketing

- What kinds of injunctions are there?
 - 1) Interim
 - 2) Interlocutory
 - 3) Permanent

- Why would I need one?
 - 1) Enables the police to intervene
 - 2) Helps to protect your interests
 - 3) Allows for an immediate response

Preparing for an Injunction

- General Requirements for an Injunction:
 - 1) *Prima facie* case or a substantial issue to be tried
 - 2) Irreparable harm
 - 3) Balance of convenience (must favour granting)

- Preparations for an Injunction:
 - Don't act too quickly
 - Maintain a daily diary of all significant events related to the strike
 - Gather sufficient evidence (affidavits, videotapes)

Injunctions in Labour Disputes

- What is a “Labour Dispute”?
 - Basically, a dispute concerning terms, tenure or conditions, of employment
 - Employer / Employee relationship not required

- Special Requirements:
 - 1) You must make a reasonable effort to obtain police assistance
 - 2) Generally, you must provide two days notice to the other party
 - 3) In special circumstances, the notice requirement can be waived

- After fulfilling these, the general requirements apply

New Developments – Use of Social Media

- Potential uses of blogs and sites like Facebook, Twitter, MySpace and Youtube
- OLRB ordered a union to post decision finding unlawful strike on union's blog
 - *Ontario (Community Safety and Correctional Services) v. OPSEU*, 2009 CanLII 33833 (ON L.R.B.)

Putting the Pieces Together: Recent Cases

Pickers Concealing their Identity

- *Vale v. USWA Local 6500 et al.*, 2010 ONSC 1774 (CanLii)

- Factual Overview:
 - Bitter strike, non-compliance with court orders

- Key Takeaways:
 - 1) Courts won't tolerate ignoring court orders
 - 2) Picketers cannot hide their faces on the picket line
 - 3) Note that employers should expect some disruptions

Parties to a Labour Dispute

- *General Motors Corp. v. BBI Enterprises Inc.*, 2009 CanLii 33532 (ON S.C.)

- Factual Overview:
 - Union blockades GM, a third party, from accessing its tools

- Key Takeaways:
 - 1) Third parties can be involved in a "labour dispute"
 - 2) Assessment of police assistance having failed does not require violence
 - 3) Intentions of the picketing party matters

Intimidation of Employees Prohibited

- *Southern Sanitation Inc. (c.o.b. Wasteco) v. Fiore*, 2009 CanLii 35724 (ON S.C.)
- Factual Overview:
 - Union impeding Wasteco vehicles during garbage strike
- Key Takeaways:
 - 1) Intimidation will allow you to make out a *prima facie* case
 - 2) Harm will consider potential danger to the public
 - 3) Right to informational picketing does not extend to unduly interfering with third party businesses

Exception to Notice Requirements

- *Toronto (City) v. Toronto Civic Employees Union, Local 416*, 2009 CanLii 40562 (ON S.C.)
- Factual Overview:
 - Picketers preventing removal of infested garbage bags
- Key Takeaways:
 - 1) Immediate health hazards are an exception to notice rules
 - 2) Attempts to secure access through negotiation, and a failure of the police to assist, meets the requirement

Illegal Acts Result in Irreparable Harm

- *Toronto (City) v. Canadian Union of Public Employees, Local 416*, 2009 CanLii 37347 (ON S.C.)
- Factual Overview:
 - Picketers preventing spraying of fly infested garbage
- Key Takeaways:
 - 1) The unwillingness of police to enforce the Health Order amounted to a failed attempt to secure police assistance
 - 2) It is not necessary to prove irreparable harm where illegal acts have been committed

Things to Remember

1. Develop a strike response plan
2. Recall the value of picketing protocols
3. Contact your local police specialist
4. If necessary, ask for police assistance
5. Be aware of the value of injunctions and how to prepare for one

Questions?

Union Drives: What to do if the Union Shows Up at Your Door

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Agenda

- Union Activity and How to Respond
- The 5 Day Certification Campaign
- Questions

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Union Activity and How to Respond

- Why employees join a union
- How unions “organize” your employees
- Early warning signs and the union’s goal
- What you can (and cannot) do in response to union organization
- Unfair labour practices and automatic certification

Causes of Employees Joining a Union

- Job security
- Workplace environment
- Leadership’s attitude and practices
- Lack of appreciation
- Human resources practices
- Wages and benefits
- Lack of promotion or advancement opportunities

How Unions Organize Your Employees

- From the inside: dissatisfied employees
- Contact with union officials
- Sources of dissatisfaction
- Union communication strategies
- Union organizing and social media

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Unions and Social Media

- Unions are now using sites like Facebook, Twitter, MySpace and Youtube for a variety of reasons:
 - Generating public awareness
 - Educating their membership
 - Rallying support for certification
- Why do I need to know this?
 - Easier access to your employees
 - Chance of factually inaccurate information
- What can I do?
 - Be proactive

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Recent Developments: Social Media



INTERNATIONAL ASSOCIATION of MACHINISTS and AEROSPACE WORKERS

PLEASE PRINT

Name _____ Telephone _____

Address _____

Company _____ Department _____

I hereby request and accept membership in the International Association of Machinists and Aerospace Workers and hereby authorize its representatives to bargain for me in all matters pertaining to my employment.

Signature of Applicant _____

Mth. _____ Day _____ Yr. _____

Date of Application _____ Signature of Collector _____

IAMTOYOTA Organizing Campaign



IAMTOYOTA Organizing Campaign



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Early Warning Signs

- Lack of eye contact
- Information freeze
- Unusual groupings
- Change in nature and frequency of complaints
- Request for information

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Early Warning Signs

- Use of “labour” terminology
- Propaganda
- Signage or websites
- Strangers on site
- Home visits

The Union's Goals

- How much support does the union need?
 - To apply for and trigger a vote?
 - 40% + 1
 - To achieve certification?
 - 50% + 1

I'm Concerned: What Should I Do?

- Conduct a self-diagnosis to determine what has changed?
- Do a full H.R. audit of the last 6 to 12 months, examining:
 - New hires
 - Terminations (for cause)
 - Layoffs
 - Transfer requests
 - Workplace incidents
 - Job competitions
- **Do not** terminate or discipline without legal advice

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Are There Any Patterns?

- Personnel:
 - Changes in the rate of discipline or complaints
 - Examine potential areas of conflict, i.e.
 - Promotions
 - Discrimination
 - Absenteeism
 - Dress code
- Organizational Units
 - Have any departments been affected by technological change?
 - Does any one area have an over representation of issues?

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Is the Union Coming?

- Conduct a self-diagnosis/audit of the organization
- Are you communicating effectively?
 - Are you listening to concerns?
- Ensure you're modeling appropriate behaviour
 - Obey the same rules as you ask your employees to follow

Communicating With Employees

- Talk to employees about their rights and yours
 - Right to support a union and the right to organize
 - Right to oppose a union and to refrain from union activities
 - Right to privacy
- Explain the consequences of signing a union membership card
- Discuss the facts about unionization

What You Cannot Say or Do

- Use coercion, intimidation, threats, promises, undue influence or violence
- Discriminate against union supporters
- Use discipline or dismissal to “freeze” an organizing drive
- Increase wages or benefits in an abnormal manner
- Threaten employees with job loss, reduction in wages, etc...
- In any way imply that a union certified plant would close or move

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What You Cannot Say or Do

- Transfer employees from desirable to undesirable work
- Engage in preferential treatment
- Discipline or discharge union supporters or organizers
- Assign work with the sole intent of causing an employee to quit
- Lay-off employees with the intent of reducing the union's efficacy
- Ask employees about whether they have signed a union card

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What You Cannot Say or Do

- Ask employees to disclose how they will vote
- Inquire about whether the employee belongs to a union
- Solicit employees about the internal affairs of the union
- Attempt to persuade employees to speak to their peers

What You Cannot Say or Do

- Interview employees, individually or in small groups, about the union
- Deny merit or automatic wage increases
- Initiate a “no union” petition for employees to sign
- Solicit employees to withdraw or get out of the union
- Refuse to answer legitimate employee questions about the impact of unionization

I Said (or Did) Something I Shouldn't Have...

- Union may launch an unfair labour practice complaint, may result in:
 - Fines (Individual or Employer)
 - A new vote
 - Union allowed to meet on Company premises during work hours
 - Postings
 - Union organizing costs reimbursement
 - *Interim reinstatement of employees
 - **Remedial (or “Automatic”) certification

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Remedial/Automatic Certification Granted

- *Communications, Energy and Paperworkers Union of Canada v. Boehmer Box LP*, 2010 CanLii 11171
- Key Takeaways:
 - Employer expression is limited
 - Be careful about threats to job security
 - Either implicit or direct comments
 - Linking unionization to job loss deprives employees of “free will”
 - Only remedy possible in such circumstance is remedial certification

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Remedial/Automatic Certification Granted

- *L.I.U.N.A., Local 1059 v. Carlos Barbosa Concrete Ltd.*, 2008 CanLii 26617
- Key Takeaways:
 - Captive audiences are a problem
 - Can include off hours and off site meetings
 - Avoid intimidation and coercion
 - Can include “jokes”
 - Remedial certification denies employees the right to choose

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Remedial/Automatic Certification Refused

- *I.B.E.W., Local 353 v. AeroStar Electrical Services Inc.*, 2009 CanLii 9205
- Key Takeaways:
 - Cannot alter working conditions during campaign
 - Raises
 - Assigning company vehicles
 - Other benefits
 - O.L.R.B. has multiple remedies at its disposal
 - Another representation vote
 - Reinstatement and compensation

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What You Can Do

- Protect employees from harassment from union organizers
- Prevent union solicitation during working hours
- Express in letter a desire to remain non-unionized
- Remind employees about the good working relationships in the organization

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What You Can Do

- Inform employees about the hidden costs of unions
- Advise employees of concerns regarding changes that may occur if union succeeds
- Ensure employees are aware you would prefer to deal with them individually rather than collectively
- Respond to any misleading information

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What You Can Do

- Ensure employees are aware union promises may not be realized
- If attendance voluntary, you may express your views to small or large group meetings
 - Aggressive message to a “captive audience” is an unfair labour practice (meeting during work hours, where attendance is compulsory or absences are obvious)
- Verify that employees are aware of the requirements for union membership
 - Existence of union dues
 - Nature of collection bargaining and the possibility of loss of income during a strike

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The Certification Process: 5 Days from Application to Vote

- Day 0: Application for Certification
- Day 1: Communication with Employees / Receipt of Notice from the OLRB
- Day 2: Employer's Response to Application due by 5:00 pm
- Day 3: Communication with Employees / Receipt of Notice of Vote and Hearing
- Day 4: Communication with Employees
- Day 5: The Vote

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The Certification Process: Day 0

- Employer receives the Application for Certification
- Application must be sent to the employer first
- Possibly first notification of union activity
- Employment conditions are temporarily frozen
- Employer must respond to the Application

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The Certification Process: Day 0

- Employer has 2 business days to file its Response
- Within 5 business days of receipt of Application, a "Secret Ballot Certification Vote" will normally be held
- Do not ignore the Application; seek immediate advice

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The Certification Process: Day 1

- Notice of Application for Certification **from the OLRB**
- Employer must post the notice and Application received on Day 0
- What can you say to employees?
 - General Position Only

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The Certification Process: Day 2

- Employer files its Response with OLRB
- Response must include:
 - Identification of employer and its representatives
 - Employer position on appropriate bargaining unit description
 - Affected parties (ie. other trade unions)
 - Employer proposed vote arrangements
 - List of employee names within the union (or employer) proposed bargaining unit

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The Certification Process: Day 2

- First opportunity to respond and ask:
 - Does the union have membership evidence representing 40% of the proposed bargaining unit?
 - Is the scope of the Union's proposed bargaining unit appropriate?
 - Are managerial employees included? Individuals employed in a confidential capacity to labour relations?
 - Are any of the employees ineligible?
 - Is there a community of interest?
 - Who is eligible to vote?
 - Employees in the described bargaining unit

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The Certification Process: Day 2

- Board may prevent you from raising objections later
- Only chance to influence date, time and place of vote
- Objecting to timing of the vote after the fact will prevent raising those issues later on

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The Certification Process: Day 3

- Parties receive notice of vote and hearing
- Parties consult with a Labour Relations Officer (LRO)
 - Discuss issues, i.e. list of eligible voters, scope of bargaining unit
- LRO helps resolve differences arising with regards to the application process

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The Certification Process: Day 3

- Possible communication with employees – employer's position on union certification
- Remind employees to "Get out to vote"
 - Aware of date, time and place of vote
 - Fewer voters means easier certification for the union

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The Certification Process: Day 4

- Day preceding the vote
- Continued consultation with LRO
- Opportunity for further communication with employees
- Ensure all employees are aware of date, time and place for vote

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The Certification Process: Day 5

- Voting Day
- Secret ballot conducted by Ministry of Labour representative
- A representative of each party scrutinizes the vote
- What about challenged voters?
 - Their ballots are sealed and segregated

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The Certification Process: Day 5

- When must objections about conduct be raised?
 - Conclusion of the vote **or** within five (5) business days after the vote
- What happens next?
 - Normally, ballots will be counted
- What's the outcome?
 - 50% + 1 favouring unionization results in the union being certified

Questions?