Roles, Responsibilities and Legal Rights

SCENARIOS

Examine the scenario(s) assigned to your group. Try to identify the Steward's role, responsibilities and legal rights/obligations in this case. Be prepared to report back with key discussion points.

1. You have just received a phone call from a member who has been ordered to attend a disciplinary meeting in 10 minutes. The member was given no notice and you are the only union representative on-site. He has no choice but to attend the meeting and wants you to come as his union representative. Your Supervisor is out of the office and you cannot reach her by phone. You are the only one in the office at this time.

2. You received notice from Human Resources that a grievance filed by a member that you are the union representative for, was withdrawn. The grievance had been put in abeyance pending the outcome of mediation. You followed up with the member who explained that her supervisor suggested it would be an act of good faith to withdraw the grievance and would likely ensure a better outcome at mediation.

3. A member, who is also a good friend of yours, comes to you with a problem and wants to grieve. He has been reassigned from a project he enjoys to one he doesn't want to work on. You have discussed the issue with the Chief Steward and you both agree that the member really doesn't have a case. The member disagrees and wants you to represent him anyway.

4. You received a response from the employer for the first level grievance hearing. The grievance was denied. In their

response, the employer raises an issue that requires follow-up on your part. You need to meet with the grievor and some of the witnesses to prepare your case for the second-level hearing. You requested 2 hours leave to prepare the case and it was denied by your Supervisor.

5. Your manager calls you aside to discuss a promotional opportunity. He says that you do great work and that you are being considered for an upcoming acting appointment. He thinks it would be a great opportunity for you and that something more long-term could develop from it in future. The manager suggests that you would be more likely to get the position if you back-off from union activity for a while.

6. You presented a member's grievance at first-level hearing. You are waiting for first-level response from the employer. The grievor approaches you to say that she talked to her manager about the grievance earlier that day. The manager presented the grievor with some suggestions for resolving the grievance at first level and wants a response from her by the end of the day.

7. Last week, you spoke at a public meeting as a representative of your Local. You were part of a panel on contracting out. You spoke against measures being introduced in your workplace to contract out property management. When you returned to work, you were disciplined. In your discipline hearing, the employer said that as an employee, you must adhere to the policy that compels all employees to ensure a positive public image of the organization.

8. A member has just come to you asking for your assistance to

file a grievance. This member is being fired. You know that there have been issues with this member's work performance. He is regularly late, does not complete his work, takes longer lunches and has tried to blame co-workers for incomplete tasks. Other members have come to you in the past complaining about this member's incompetence. You know that co-workers are secretly relieved that management has finally dealt with a problematic employee

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.

Québec 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.

Discipline—Rights to Union Representation

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DUE PROCESS

The principle of due process underlies our justice system and is well established in the area of administrative law. It has been imported into the workplace, with the collective agreement giving meaning and substance to the right. The concept of due process has been described as penetrating "to the heart of the relationship of the employer and the employee."[1] The employer's methods of collecting evidence and dealing with an employee accused of misconduct must be consistent with notions of fairness. Unfairness may compromise the process and lead to the discipline being overturned, as described in the leading case of *Hickeson-Langs Supply Co.*,[2] where Arbitrator Burkett stated:

> *"These safeguards are in the nature of contractual due process. While it may seem unfair to the employer to have its actions found to have been null and void, the due process provisions are central to the representation provided under the collective agreement and, in our view, there is no other way to give real meaning to them."*

This means that the employer must take an employee's rights to union representation seriously. Ultimately, the overturning of any disciplinary sanction will depend on two things—the particular circumstances surrounding a claim of abuse of representational rights, and what the parties to the collective agreement have negotiated.

NEGOTIATED REPRESENTATIONAL RIGHTS

Collective agreement language describing rights to union representation in matters of discipline varies in its strength and scope. Most collective agreements covering PSAC members contain a provision providing an employee with the right to union representation at the time s/he is interviewed regarding allegations of misconduct, or alternatively, at the time discipline is imposed. Some agreements oblige the employer to remind the employee of his/her rights to representation. Or an employer may be required to notify both the union and the employee in advance of the meeting, and to indicate its purpose. The employer may be required to furnish grounds to an employee prior to imposing a disciplinary measure.
Other language refers to time limits for placing items of a disciplinary nature on an employee's file, and notifying the employee of whether or not the file will be used at the meeting.

The scope of representational rights is found in the precise wording of the collective agreement.

TRENDS IN ARBITRAL JURISPRUDENCE

Brown and Beatty, *Canadian Labour Arbitration* (Third Edition), at pp. 7-8, 7:2100, notes that arbitrators in more recent cases are inquiring into the purpose and importance of the obligation, rather than focusing on details such as whether the word "shall" was used, or whether the consequences of non-compliance were expressly described in the agreement. This has been described as the "purposive approach."

According to Arbitrator Mervin Chertkow [3]:

"The purposive approach to interpretation of union representational rights has now gained wide recognition… The Industrial Relations Council of British Columbia in Fording Coal Ltd.[4] characterized representational rights as 'substantive, mandatory and fundamental.' In Highland Valley Copper,[5] I adopted the reasoning of the Council in Fording Coal:

Where there are provisions in a collective agreement granting such representational rights, they are substantive. They ought to be given a broad, purposeful interpretation. I agree that the purpose of such representational rights is to give the employee advice and support that is akin to and which, in other circumstances, would be found between a lawyer and his client. That is so, in my view, both before the actual decision to discipline an employee is made as well as at the time discipline is imposed. Simply put, where the contract language so provides, an employee is entitled to have a union representative present to assist him in explaining the circumstances surrounding the incident, to plead on his behalf that either an employment offence did not occur or if it has occurred, to argue for a quantum of discipline as minimal as the company would be prepared to accept. That is the purpose for granting such representational rights. For the reasons set out in the Fording [4] decision, such rights serve a constructive and useful purpose for both parties in furthering a harmonious relationship between an employer and a union."

RESULTS OF NON-COMPLIANCE

Where supported by the collective agreement, an abuse of an employee's rights to representation will likely result in the disciplinary

measure being overturned. In *Wendy Evans* [6], where the collective agreement provided for representation "when an employee is required to attend a meeting, the purpose of which is to render a disciplinary decision…", Adjudicator Tarte found that the employer's actions violated the grievor's representational rights. In ruling the discharge null and void, he stated:

"The right to representation in such circumstances is a substantive one whose breach cannot be cured at some later date by a hearing de novo. Unlike Tipple (Federal Court of Appeal A-66-85), this case is involved with more than simple procedural fairness. Given the nature and purpose of such rights, they ought to be interpreted liberally for the benefit and protection of the employee.

The weight of arbitral authority in situations such as this is to declare the discipline imposed 'void ab initio'. Employees who must attend meetings concerning the imposition of disciplinary sanctions are extremely vulnerable and in many cases incapable, in those trying moments, of properly representing themselves. Unfairness must not be allowed to be part of the disciplinary process. An employer must ensure strict compliance with a clause such as 34.03. Failure to observe its edicts must of necessity vitiate and render null the disciplinary sanction imposed."*

* void *ab initio* is a Latin phrase meaning to render meaningless *from the beginning*.

References:

1. *York University* (Day Grievance), unreported, December 3, 1974 (O'Shea)
2. *Hickeson-Langs Supply Co.* (1985), 19 L.A.C. (3d)379 (Burkett)
3. *Mandatory Union Representation at Discipline: An Arbitrator's Perspective* (1993 Labour Arbitration

Yearbook)

4. *Fording Coal Ltd.*, unreported, I.R.C. No. C39/88, February 11, 1988, at 12 of the award

5. *Highland Valley Copper*, unreported, April 19, 1988 (Chertkow)

6. *Wendy Evans v. Treasury Board*, PSSRB file 166-2-25641, October 21, 1994 (Tarte)

7. *Government of Province of British Columbia (Personnel Services Division)* (1991) 21 L.A.C. (4th) 325 (Bird)

8. *Fording Coal Limited* (Burton arbitration), unreported decision of September 12, 1988, at page 47 (Hope)

9. *Valdi Foods and United Food and Commercial Workers*, Local 175 (1991), 19 L.A.C. (4th) 114 (Kirkwood)

10. *Schneidman v. Canada Customs and Revenue Agency*, File 166— 3432591 (Henry), citation 2004 PSSRB 133

Unfair Labour Practices

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Unfair labour practices interfere with workers' rights to join and participate in the union, or in the union's right to represent its members. Unfair labour practices target union representatives or union members for discriminatory treatment because they exercise their union rights. Federal, provincial and territorial labour laws describe unfair labour practices as prohibited conduct, and provide a complaint mechanism to have the matter reviewed. If the labour board agrees that the conduct has violated the law, it can intervene and order that the practice stop.

Before the first labour laws were enacted in Canada, workers had exercised their rights to strike, form unions and bargain collectively before it became "legal" to do so. When these fundamental rights found their place in the early labour laws, they came with protections. Legislators early on decided that legislative provisions were needed to prohibit an employer from abusing its power to circumvent or undermine these rights. Without the protections, it was thought that employers could basically buy the type of union or union representative that served their needs, or use coercion and intimidation to prevent workers from joining or participating in the union or otherwise exercising their rights. These first "unfair labour practice" provisions were the precursors of our modern versions. Today, in every jurisdiction, each labour code outlines in detail those "unfair labour practices" prohibited under the statute.

The law provides a framework to protect union representatives and the members they represent from these illegal practices. Over time, there have been many labour board decisions that have sent a strong message to employers that these rights must be observed and taken

seriously. By the same token, an equally strong message has been conveyed to unions that only serious allegations should be brought as unfair labour practice complaints.

Therefore, to protect and promote the effectiveness of the union at the workplace, we need to consider the unfair labour practice complaint as but one option among a variety of tools and strategies.

PROHIBITIONS

Unfair labour practices vary from statute to statute. Generally speaking, unfair labour practices are those employer actions or conduct that interfere with union rights. In addition, the union's failure to fairly represent its members can be considered such a practice. Prohibited employer practices, in general terms, mean that:

- management can't interfere in the formation or administration of a union;
- management can't interfere with a union's representation of its members;
- management can't prevent an employee from joining the union;
- management can't stop an employee from participating in a union's lawful activities;
- an employee cannot be discriminated against, threatened, intimidated or restrained from exercising union rights.

In practical terms, here is a brief description of some actual examples of employer conduct that has been found to constitute unfair labour practices.

- belittling and intimidating an employee who files a grievance[1];

- making intimidating and threatening comments with respect to the lost career advancement prospects of an employee because he files grievances [2];
- threatening to remove certain benefits from employees unless grievances are withdrawn [3];
- threatening to document the activities and performance of a union representative, who files and provides representation on grievances, for the purpose of taking appropriate action to curb the number of "unwarranted grievances" [4];
- withdrawing an offer of assignment because an employee indicated she would file a grievance with respect to one of the conditions regarding the assignment [5];
- withdrawing an acting appointment because an employee had submitted a grievance [6];
- retaliating against an employee for testifying at an arbitration hearing [7];
- making critical comments on the performance appraisal of an employee that referred to her conduct while interacting with the employer in her capacity as a union representative [8];
- disciplining an employee for using an alleged commanding and disrespectful tone of voice to a manager while she was acting in the capacity of a union representative [9];
- threatening disciplinary action against a union representative if he provided representation on an Employment Insurance (EI) appeal of one of his members because it contravened his employer's policy stating that employees (of that particular government department) could not act in an advocacy role on behalf of a client of that department [10];
- threatening to discipline an employee if he didn't withdraw as

the union nominee on a community board because it allegedly placed him in a conflict of interest situation given his particular job for the employer [11];

- taking disciplinary action against a federal public service employee for having publicly criticized the proposed federal free trade agreement in his capacity as a union representative [12];
- chastising a union representative and reminding her that her rights to publicly criticize her employer, to whom she owed loyalty and fidelity, did not extend to condemning job cuts in a meeting with MPs [13];
- conducting focus group meetings of employees where bargaining issues were sometimes discussed [14];
- paying the legal fees of a suspended member who brought damages for libel and defamation against union representatives [15].

LIMITATIONS OF UNFAIR LABOUR PRACTICE COMPLAINTS

As can be seen from the above references, unfair labour practice complaints have resulted in many important decisions that have helped us protect and further define our union rights. These in turn have been used successfully by other union representatives and members to demand fair treatment and practices. This is how it is with "good case law". It becomes a template for defining how the law must be applied. It has meaning when it is used through individual and collective action to preserve and enhance these rights.
It is therefore in our collective interests to have supportive case law. That is why the Alliance carefully reviews each and every request to support an unfair labour practice complaint. The costs of unfavourable decisions and "bad case law" are too high for individual complainants, their union locals and the membership as a

whole. Even a "neutral" denial of an unfair labour practice complaint can have negative consequences, as it very often puts the stamp of approval on employer actions that were the subject of the complaint. The outcome is that the employer's conduct is judged "lawful". Some union representatives in very difficult situations feel they have nothing to lose by filing an unfair labour practice complaint when indeed, they (and all of us) have something to lose. Therefore, we must proceed with caution.

From an examination of the case law, we can draw certain conclusions about how some labour boards view unfair labour practice complaints.

1. Serious matters

As expressed by one Board member,

I wish to comment that the accusations … are most serious. Allegations should not be made lightly and complainants have the duty and obligation to submit appropriate evidence to support their allegations.

Respondents have a right to defend themselves. [16]
As it has already been decided in other Board decisions, complaints … are serious procedures which should not be raised in an uncaring and flippant manner. In all legal procedures and, in particular, in matters subject to a complaint …, the parties should proceed carefully and with regard to the consequences of their actions. [17]

Both the *Canada Labour Code* and the *Public Service Labour Relations Act* provide for fines to be imposed upon summary conviction of an offence with respect to an unfair labour

practice.

2. **Clear proof**
   Because unfair labour practice allegations are regarded as very serious matters, they generally demand a higher standard of proof than in other kinds of cases. For example, in the case of the Public Service Labour Relations Board (PSLRB), we must establish a *prima facie** case of a violation of the Act and present clear and compelling evidence in support of the allegations. Mere suspicions and loose, circumstantial evidence will not suffice. The burden of proof is akin to a "quasi-criminal" proceeding. Otherwise, the Board is likely to interpret the prohibitions very narrowly in favour of the respondent. For example, a general conversation between a supervisor and an employee suggesting the employee curb his involvement with the union did not amount to a violation because it did not involve direct threats or clear intimidating statements. [16]

3. **Serious Transgressions**

   Frivolous submissions can be harshly dealt with by a Board. Only serious issues or breaches should be the subject of an unfair labour practice complaint, and be those that are clearly prohibited by the legislation. In other words, the conduct must be more than simply "unfair" in a general sense; it must fit within the specific legal framework. Only clear and blatant violations generally succeed.

4. **Complainant must have "clean hands"****

   It is not unknown for complainants to be harshly treated by a Board. When the evidence is mixed, that is, where the complainant's own conduct is open to criticism, a Board may well cast the facts in the worst possible light for the complainant. 18

* *prima facie* is a Latin term meaning "on the face of it" or "at first appearance".
** "clean hands" is a legal term meaning that someone initiating a proceeding must be in a position free of unfair or questionable conduct.

1. **Be proactive in identifying possible "pressure points" that might contribute to strained union/management relationships.**
   Notwithstanding the previous comments, if the price of good working relationships is at the expense of our union rights, then it's not a cost we should be willing to pay. We have a right to expect knowledgeable and well-trained managers and supervisors who recognize the value of the union and know better than to waste their time interfering with union representatives' pursuing the legitimate rights and responsibilities of the union, or members' exercising their legal rights. However, working relationships sometimes deteriorate, not because of anti-union animus or conscious attempts to restrain or discriminate against union representatives, but because supervisors and managers are also trying to balance their responsibilities of "getting the work done" and respecting union rights. We have learned a lot from past experience with the result that union and management in many workplaces have negotiated tangible supports for the exercising of union rights. Management, in many cases, recognize the value of well trained and accessible union representatives and is providing material support in the form or paid leave for union representatives to work full-time on union activity, office space and equipment, union training at the workplace and union meetings during working hours. Be proactive in identifying possible "pressure points" that might contribute to placing a strain on relationships within your workplace or work unit. Work with others in the local to identify preventative measures and strategies.

2. **You have equal status.** As a union representative, always conduct yourself with the knowledge and confidence that you have a right to be treated by the employer as an equal when you are acting in the capacity of a union representative. You should not be treated as an "employee" in those situations or be expected to conform to the normal rules governing the employer-employee relationship. Your responsibilities at that time are to the union membership. The law recognizes the adversarial nature inherent in the union management relationship and that as such, union representatives enjoy substantial immunity vis-à-vis the employer. If union and management could meet as unequals, then the role of the union representative would be severely compromised. Management could dictate how a union representative could behave. Management could muzzle a union representative into quiet complacency. In effect, there would be no union at the workplace.
3. **Be a strategic problem solver.** As a general practice, try to resolve problems at source. In other words, try to resolve them "at the lowest possible level" and as early as possible. Get to know the respective managers and supervisors and generally try to provide them with the opportunity to resolve problems within their area of jurisdiction. The same holds true for various workplace committees with problem solving mandates. Get to know the various committees and whether or not a particular problem rightfully belongs with a particular committee.

4. **Avoid divisions within the membership.** Try to avoid any situation that could pit a union member against a union representative in relationship to the employer. When representing a member's concerns or interests, be clear about the objective and the process, and that you have the member's support. Plan the approach together, and report back to the member as soon as

possible if s/he was not present when the matter was being discussed with the employer. As a general rule, do not use the Union Management Consultation Committee table to discuss matters affecting an individual employee. Find out all you can about the "organizing model" way of working and look for ways to involve members in solving workplace problems.

The same holds true for collective action or on issues where the local takes a stand with the employer. Lay the necessary groundwork to mobilize membership support or otherwise ensure that members are supporting union representatives. Division within the membership has the potential to lead to some kind of employer reaction or intervention that may or may not constitute an unfair labour practice.

5. **Don't tolerate anti-union behaviour.** As early as possible, deal with anti-union statements or conduct on the part of employer representatives. Separate those that are motivated by anti-union animus or malice from those that are not. Distinguish those that are intimidating or threatening from those that aren't. Differentiate between those made by supervisors who are members of the union from those made by managers who are not. This isn't to say that they all shouldn't be dealt with, but statements based on honest mistakes, "fair comment" or the right of union members to criticize union practices need to be treated differently from direct threats. However, be strategic in how you go about it.

6. **Keep a written record.** Always record the exact statements and a full description of the circumstances. Include how you felt and its impact on you, especially if you felt threatened or intimidated. Ask yourself if a "reasonable person" would feel threatened or intimidated if faced with the same situation. Sign it and date it. Identify any witnesses and get them to write down what they

observed. Or, write down what they told you and then ask them if it is correct. Ask them to sign it and date it. Any statements should be written legibly, signed and dated. These statements will be used by grievance Adjudication Officers to help members remember what happened. The more detail the better.

DOCUMENT! DOCUMENT! DOCUMENT!

Contact another union representative without delay and talk about what happened. Discuss possible strategies to effectively deal with the problem.

7. **Plan your approach.** Don't confront the person alone, unless you've made a conscious decision that this is likely the best approach under the circumstances. Consider involving another union representative, or it may be that the situation warrants a meeting between the entire executive and one or more appropriate management representatives. Stick together. Be clear about your objectives. Plan who will say what and what your options are if you cannot secure the desired commitment. Keep a record of what happened at the meeting.

8. **Work on your communication style … especially in difficult circumstances.** Do your utmost to engage in respectful communications at all times. There are times when this will be extremely difficult. Try not to be easily provoked, react with anger or respond with a personal attack. Try to remain cool, objective and focussed on the issue athand.

9. **Develop a working knowledge of unfair labour practices.** Get to know the legislation that applies to the bargaining units you represent and keep abreast of amendments that are made from time to time. Become familiar with the section on unfair labour

practices. It usually specifies what constitutes prohibited conduct. It often specifies what is not an unfair practice. For example, the *Public Service Labour Relations Act* has an employer "free speech" provision saying that an employer doesn't commit an unfair labour practice where it expresses its opinion, as long as there is no coercion, intimidation, threats, promises or undue influence. Find the section that describes the complaint mechanism, especially whether or not there are time limits for filing a complaint. All labour boards now have a website and many have information bulletins, forms and decisions on-line. Consider organizing a workshop for all local representatives on these rights and protections and what they mean in practical terms.

10. **Get advice.** Get sound advice on whether or not particular comments or conduct are practices prohibited by the legislation, and the likelihood of a successful unfair labour practice complaint. Carefully weigh the consequences of filing a complaint and assess whether or not the desired outcome will likely be achieved. Consider what other options there are to achieve the desired outcome. Investigate whether or not the labour board has a requirement that other avenues must be pursued prior to filing a complaint. Never consider filing a complaint solely as a "tactic"—a complaint must be rooted in substance with sound evidence to back it up. Never "threaten" the employer with a complaint, especially if you don't yet have Alliance agreement to provide representation.

11. **Never file a complaint directly with the Board** without first asking for a review of the case by the Alliance. Filing without the endorsement of the union is very risky. The outcome may be that the Alliance will not agree to provide representation and possibly cause embarrassment and perhaps weaken your position. The quality of the review will depend on the quality of the evidence.

Provide a complete file with clear details describing each and every incident and all supporting documentation. The case will be analyzed and reasons provided on why the Alliance supports or does not support proceeding with a complaint. If a decision is made to not support a complaint, the consequences of proceeding alone need to be very carefully weighed.

12. **Find out about the relationship between the rights and protections in the legislation and those in the collective agreement.** Most PSAC collective agreements have a "no discrimination" provision listing "membership or activity in the Alliance" as a prohibited ground of discrimination. This could mean that in the case of *Canada Labour Code* (Part 1) units, the Canada Industrial Relations Board may refuse to hear a complaint if it can be the subject of a grievance. In the case of *Public Service Labour Relations Act* units, because the legislation specifies that an individual or group grievance cannot be filed when an administrative procedure for redress is provided under any Act of Parliament, the employer may refuse to accept a grievance because the matter can be the subject of a complaint elsewhere. If considering a grievance or complaint, get advice.

13. **Consider mediation.** If a dispute clearly exists and the union's ability to effectively represent members is compromised, consider mediation as a means to negotiate a settlement that addresses athe underlying causes of the conflict. Using this process, union representatives have achieved outcomes that were unavailable through the formal complaint mechanism. Settlements have included practical workplace solutions that have laid the foundation for better working relationships.

14. **Local development is your best protection!** Invest time and energy in local development. It's key! Get help from the Regional

Vice President and PSAC Regional Representative. A local development plan should result in all executive positions being filled, enough stewards and functioning joint and local committees. Build in a training plan for all local representatives. Identify tangible forms of employer support for union representatives' being able to perform their union duties, and a strategy to put them in place. Invite the employer to join the local in jointlysupported training sessions on topics such as the collective agreement and union management consultation.

15. A union local under the leadership of just one or two hard-working union representatives is not in the best interests of the union. Besides, it can set the stage for allegations of unfair labour practices if the employer tries to balance its obligations of respecting union rights with its legitimate interests of insisting on reasonable work standards for employees who are also union representatives. Our aim should be to involve more members, spread the union work around, and develop a strong union presence through a team of knowledgeable and effective representatives.

References:

[1] Joanne Hébert, PSSRB file 161- 2-336

[2] Rock Lalancette, PSSRB file 161-2-251

[3] Roger Vaillancourt, PSSRB file 161- 2- 351

[4] Jacob DeGroot, PSSRB file 161-2-311

[5] Lorena Connick, PSSRB file 161-2-329

[6] Raymond Tremblay, PSSRB File 161-2-455

[7] Richard Marken, PSSRB file 161-2-605

[8] Hella Prante, PSSRB File: 161-2-388 to 393

[9] Brenda Scruby, PSSRB file 161-2-420

[10] Harvey Linetsky, PSSRB file 161-2-316; FCA file A-1482-84

[11] Rex Gilbert, PSSRB file 161-2-712

[12] Mike Clough, PSSRB file 161-2-511

[13] Donna Willan, PSSRB file 161-2- 834

[14] PIPSC and Treasury Board, PSSRB file 161-2-1104

[15] Gary Smith, PSSRB file 161-2-344

[16] Felix Hanzek, PSSRB file 161-2-334

[17] Gwen Jackson, PSSRB file 161-2-399

[18] Corina Tobin, PSSRB file 161-2-438; Nathan Godfrey, PSSRB file 161-2-518

[19] Lynn Fairall, PSSRB file 161-2-368