

WHAT TO DO IF YOUR UNION IS NOT REPRESENTING YOU

Introduction

When an employee is a member of a union which has a collective agreement with an employer, special rules regarding employment issues apply. While the *Employment Standards Act* applies to all employees, members of unions cannot make their own complaints under the Act. Rather, their rights must be pursued by the union on their behalf. In the same way, the collective agreement will provide for a mediation and arbitration process through which disputes of members of the union with the employer, including termination of employment, will be resolved. It is not open to the union member to choose to sue the employer in Court. The union member's rights flow through the union.

Periodically, union members complain that their unions are not adequately protecting or pursuing their rights against their employer. As unionized employees have no independent right to take action against the employer, the employees' right is to make a complaint against their union.

The Duty To Fairly Represent

Most unionized employees in Ontario are governed by the Ontario *Labour Relations Act*. Employees of banks, railways, airlines and other federally incorporated corporations such as trucking firms that conduct business Canada wide are governed by the *Canada Labour Code*.

Under the Ontario *Labour Relations Act*, s. 74, a union has a duty to fairly represent its members. In making decisions, the union may not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of its members. The union is required to honestly consider their members' concerns. This is not a high standard for a union to meet. Valid defences to a complaint can be that the issue is not significant enough to warrant the time and expense the union would have to invest in pursuing the grievance or that success in the grievance would have a negative effect on other members of the union.

If the union member feels that he or she has not been adequately represented by their union, their legal remedy is to make a s. 74 Duty of Fair Representation Complaint to the Ontario Labour Relations Board. The OLRB hears the complaint and, if satisfied that the union has acted in a manner that is arbitrary, discriminatory, or in bad faith, will instruct the union to take whatever steps it deems appropriate.

The reality is that the complaint process is a long one and almost always lost. Unions defend these complaints vigorously using experienced counsel.

Parkdale Community Legal Services recommends that before considering making a Fair Representation Complaint, union members attempt to resolve their issue with the union by taking the following steps:

1. Speak to their shop steward and ask for a meeting to discuss the grievance.
2. If the union member does not trust the shop steward, he or she should speak to another steward or to one of the executive – the president, vice-president, or other member who seems approachable and trustworthy.
3. If the union member is still not satisfied, they should speak to the union representative who is assigned to their bargaining unit. The union member should request a meeting away from the workplace to explain their situation. If the union member does not know who this person is or which local they belong to, the information can be found on the internet, by calling the local Labour Council, or the Ontario Federation of Labour.
4. If the union is still not assisting, the union member can contact the union's regional or national office to request assistance.

Making a Fair Representation Complaint

Commencing a Fair Representation Complaint is not difficult and is free. Step by step instructions as to how to make the complaint are provided at the Ontario Labour Relations Board website at <http://www.olrb.gov.on.ca/english/infob/infbul11.htm> . Links to the relevant forms that must be completed are set out at that website.

Further helpful information regarding these Complaints is found at <http://www.olrb.gov.on.ca/english/infob/infbul12.htm> (Duty of Fair Representation – What Does it Mean?).

The process requires the union member to complete an Application form (which could be done in handwriting) and serve it with two other forms on the union before filing it with the Board. For union members without access to the web, the Ontario Labour Relations Board may be reached at 1-877-339-3335.

There is no time limit for filing a Fair Representation Complaint, but excessive delay without a good explanation may cause an application to be dismissed.