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 **NORTON ROSE FULBRIGHT**

Labour Relations 101

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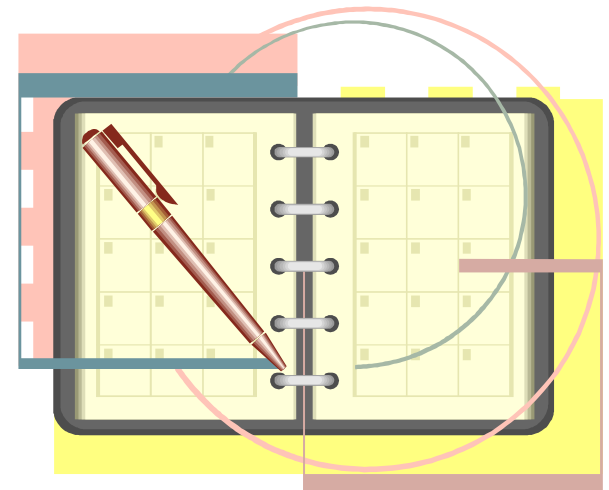
Norton Rose Fulbright Canada LLP

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What's on the Agenda?

- **The Lay of the Land....**
Some BCLRB Statistics
- **Tricks of the Trade (Union)**
Why employees unionize and why that matters
- **Can I have that in writing?**
Collective Agreement Administration
- **Question & Answer Period**

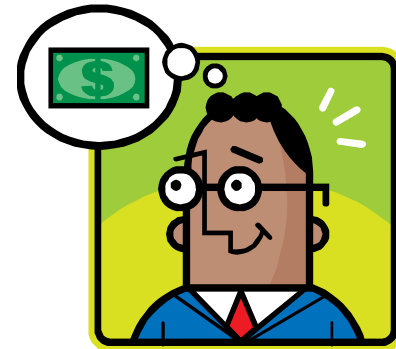


The Lay of the Land

- Over the past year:
 - The number of Section 12 (Duty of Fair Representation) complaints from employees against their unions has increased by approximately 20%
 - The total number of applications to cancel union certifications has increased by approximately 35%
 - The total number of certification applications has been decreasing since 2013
- What does this mean?

Tricks of the Trade (Union)

Why Do Employees Join a Union?



Many Employers assume it is a
Question of Money & Benefits

Top Reasons Why Employees Unionize

- In fact, money and benefits are rarely the reason
- The top reasons are usually:
 - **Lack of information sharing** (e.g. the employer gave employees only a minimal amount of information about the organization's economic state, goals, and achievements)
 - **Changes in the workplace without notice** (e.g. the introduction of changes in procedures and policies without advance notice or explanation to employees)

Top Reasons Why Employees Unionize

- The top reasons are usually:
 - **Changes in the workplace without consultation** (e.g. the employer made key decisions affecting employees without soliciting their opinions or advice)
 - **Ignoring dissatisfaction** (e.g. the employer downplayed or ignored employee complaints or concerns)



Top Reasons Why Employees Unionize

- All of these top reasons have one common denominator:

Broken Communication



Top Reasons Why Employees Unionize

- When too many decisions are seen to be made from a distance:
 - Employees feel disenfranchised
 - Managers foster a “we / they” or “us / them” mentality
 - Certain managers or supervisors profess never to have a problem
- The lack of effective upward and downward communication between employees and management is a prime reason for union success and for continued union success

Survey Says...

- Of 7,000 Canadian employees surveyed, 60% ranked having a pleasant work environment as the most important factor when searching for a new employer: *ICMA International survey, 2011*
- Of 800 HR professionals surveyed, 73% believed that managers who bully, speak inappropriately to staff, play favourites or are disrespectful are “a significant problem in today’s workplace”: *HRPA survey, 2010*

Survey Says...

- Of 1,769 Canadian employees surveyed, 22% ranked a lack of recognition and a negative work environment as two of the top workplace stressors: *Desjardins Financial Security National Health Survey by Ad Hoc Recherche, 2010*



Survey Says...

- A survey conducted in 600 unionized companies reveals, in order of importance, what employees hope to accomplish with a union:
 - 1) Fair treatment of complaints
 - 2) Good prospects of job security
 - 3) Management awareness of employee qualification and goals
 - 4) Praise and credit for good suggestions
 - 5) Corrections made in a friendly / constructive way

Survey Says...

- 6) Raises in pay based on merit
- 7) Promotion of the most qualified employee without favouritism
- 8) Praise and recognition for above average work
- 9) Managed expectations of a reasonable amount of work
- 10) Wages comparable to that of the going rate in the community

The irony is that a unionized workplace often accomplishes the opposite effect in many of these respects

The New Era Union...

- **Current** Union strategies have been:
 - Open
 - Focused on getting to know employees
 - Socially aligned
 - Persistent



Unfair Labour Practices...

- It is a breach of the *Code*:
 - for an employer or a person acting on behalf of an employer to interfere with the formation, selection, or administration of a trade union
 - for an employer or a person acting on behalf of an employer to interfere or attempt to interfere with an employee's right to participate in a trade union by discriminating against, threatening, or penalizing the employee

Unfair Labour Practices...

- The *Code*, however, generally permits an employer to communicate opinions with employees about unionization as long as the correct format is followed (e.g. no intimidation or coercion)



What to do?

- **General Rule:**
 - Take away (legally) the incentive that unions offer employees by developing stronger relationships with employees on an individual basis
- Establish a **Strong Communication Process:**
 - Discuss the tough decisions
 - Respond to complaints and concerns (i.e. tell employees you'll fix the problem, fix it, then tell them you've fixed it)
 - Conduct surveys (and do it in a manner that encourages forthright response)

What to do?

- Establish a **Strong Communication Process**:
 - Circulate newsletters or hold regular employee meetings (e.g. keep employees informed of employer developments)
 - Conduct exit interviews with employees who leave
 - Develop an orientation program for new employees
 - Create a suggestion box and respond to comments
 - Conduct evaluations of your managers – no news is not good news

What to do?

- Establish a **Strong Communication Process:**
 - Always respond in a timely fashion to an employee who has voiced a complaint and keep him or her updated
 - Be aware of the strengths and weaknesses of your supervisors and compensate for the weaknesses
 - **Caution: Can't contract with an employee individually if unionized**

Overall Strategy:

- Understand that personality of your workforce
- Know what is going on in employees' lives
- This knowledge and understanding will allow you to know when employees are unhappy and be able to respond (e.g. by explaining the reason for the treatment, or by making changes) and remove the (perceived) need for a Union or for increased Union representation

Worker dead at desk for five days

From the New York Times: Bosses of a publishing firm are trying to work out why no one noticed that one of their employees had been sitting dead at his desk for five days before anyone asked if he was feeling okay. George Turtlebaum, 51, who had been employed as a proof-reader at a New York firm for 30 years, had a heart attack in the open-plan office he shared with 23 other workers.

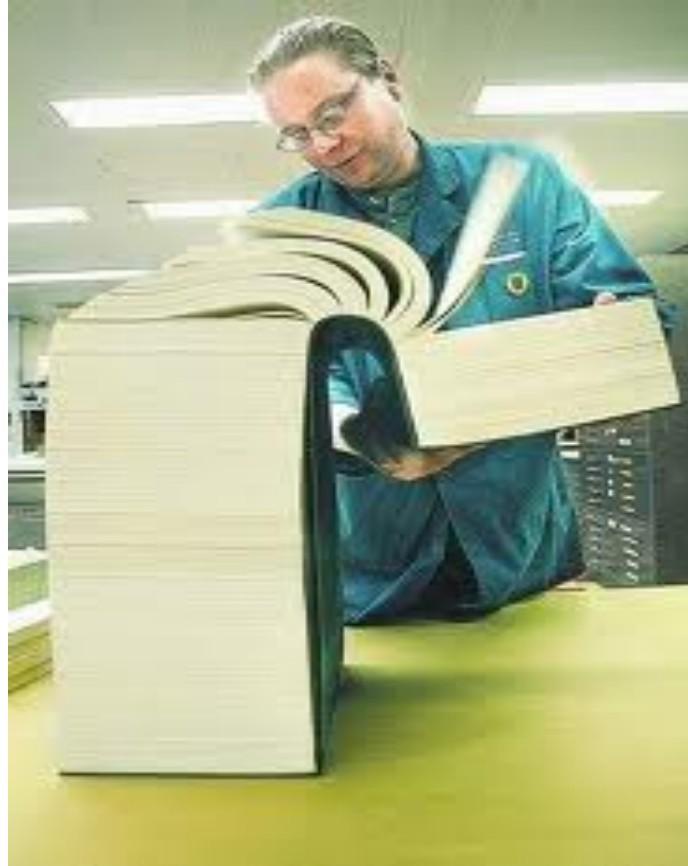
He quietly passed away on Monday, but nobody noticed until Saturday morning when an office cleaner asked why he was working during the weekend.

His boss, Elliot Wachlaski, said: "George was always the first guy in each morning and the last to leave at night, so no one found it unusual that he was in the same position all that time and didn't say anything. He was always absorbed in his work and kept much to himself."

A post mortem examination revealed that he had been dead for five days after suffering a coronary. George was proofreading manuscripts of medical textbooks when he died.

You may want to give your co-workers a nudge occasionally. The moral of the story: Don't work too hard. Nobody notices anyway.

Can I have that in Writing? Collective Agreement Administration



What is a Collective Agreement?

- *Labour Relations Code (paraphrased):
a written agreement between an employer and a trade union, providing for rates of pay, hours of work or other conditions of employment*



The Collective Agreement

- A collective agreement contains the “rules” that must be adhered to at work
- These rules govern management in its relationship with the employees and the Union
- They are rules that management, employees, and the Union must follow
- Grievances arise because the collective agreement has been (allegedly) breached
- Grievances can be brought by the employer or by the Union on behalf of an employee

The Collective Agreement

- Some believe the collective agreement is a complete code
- This leads to the mistaken view that if the collective agreement doesn't say you can do something, then you can't do it



The Collective Agreement

- Consider the collective agreement as a disabling document-- it tells you what you can't do
- The collective agreement will often say the employer can manage the workplace subject to the collective agreement – aka the management rights clause
 - Most collective agreements have this clause
- You can create workplace rules / policies as part of your management rights

Management Rights

- In the absence of specific language to the contrary, management has the right to make rules governing the conduct of employees
- Unfortunately, management does not have absolute rule-making authority
- A number of principles define the acceptable use of management rights

Management Rights

- Where Rules Agreed to with the Union
 - If the Union has agreed to the employer rules, then the arbitration board will not interfere
 - Still have to prove a breach
 - If penalties not set, will need to establish that discipline was appropriate
 - But the rule itself will be upheld

Management Rights

- Where Rules Passed Unilaterally by Employer
 - A rule unilaterally introduced by the employer must satisfy the following requisites to be enforceable:
 - **not be inconsistent** with the collective agreement
 - **not be unreasonable**
 - **clear and unequivocal**
 - brought to the **prior attention** of the employee

Management Rights

- A rule unilaterally introduced by the employer must satisfy the following requisites to be enforceable:
 - **notify employee** that a breach could result in discipline including discharge
 - **consistently enforced** by the employer from the outset and consistent across departments (e.g. requirement that employee receive supervisor's permission before leaving work area not enforced where other employees allowed to leave by notifying co-workers)

Best Practices for Making Exceptions

- Be careful when making exceptions to rules as this can make future enforcement difficult
- Exceptions *may* be required in the circumstances
- If you have to make an exception, then think carefully about:
 - **Why you are making the exception**
 - **Who the exception will apply to**
 - **When the exception will apply**
 - **How you will apply the exception**
- Be consistent

Right to Shop Steward Representation...

- Substantive representational right– check collective agreement
- Violation of representation rights could render the discipline *void ab initio*
- If the discipline is *void ab initio*, the employer can't try to do it right a second time
- The employer loses right to discipline the employee no matter how serious the misconduct was

Social Networking Break

- Employees can be disciplined for their social networking activities
 - *Alberta v. Alberta Union of Provincial Employees*
 - “Aliens around the Coffee table”



Right to Shop Steward Representation...

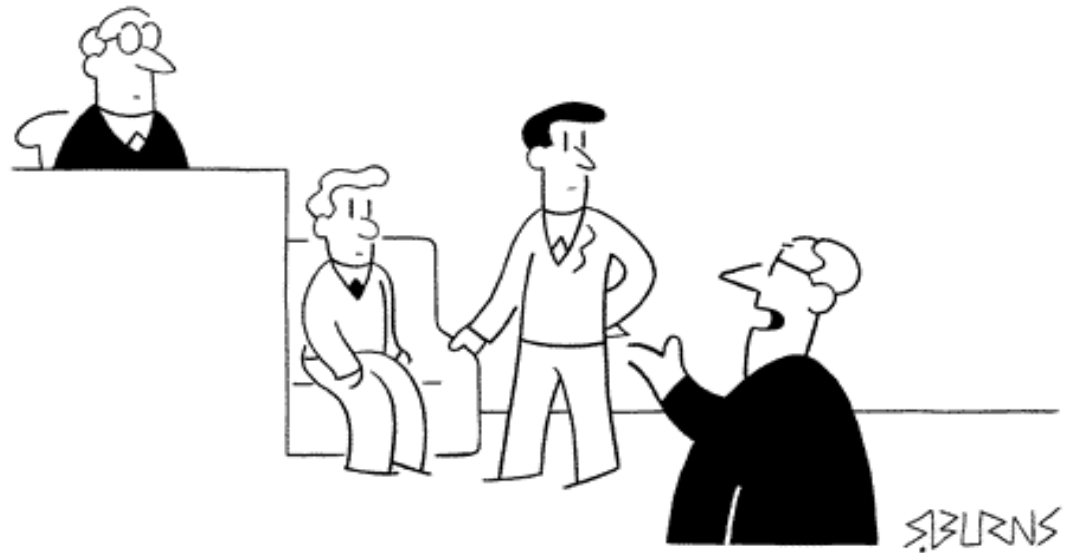
- Waiver of shop steward representation must be by way of informed consent
- The Union representative is entitled to actively participate in the meeting as advocate for the employee
- Employee should be given 24 hours notice of the meeting and be informed, in writing, of the right to a shop steward and the role of the shop steward

Right to Shop Steward Representation...

You have the right to be represented at the meeting by a shop steward in accordance with the collective agreement. We believe that it would be in your best interest to have a shop steward represent you at the meeting. Any representations of the shop steward on your behalf would be considered in the discipline, if any, which you receive. The shop steward has the right to take an active role at the meeting, and is entitled to advise you, and to make submissions on your behalf. If the shop steward is not available at the scheduled time for the meeting, I will defer the meeting for a reasonable period of time so that you may obtain shop steward representation.

Right to Shop Steward Representation...

- The Union representative is not there to answer questions on behalf of the employee
- If the Union representative only supplies the answer, it is worth nothing to you



"Your Honor, I object!
This line of questioning is making my client look really bad."

Q & A Period





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