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Strike by Workers of 21st Century

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ABSTRACT

This paper presents the findings of a study on the negative effects of work interruption and a threat of work interruption due to labour disputes in unionized organizations. The focus is on federally regulated organizations whose unionized employees are knowledge workers and whose products and services are created in the head of the workers. The primary and secondary source information and data revealed that when a labour dispute went beyond the negotiation table and resulted in a strike or a lockout, the outcome is loss for the parties of dispute and the society. Work interruption hurts the labour in the form of lost wages and benefits; it hurts the employer in the form of loss of productivity in the short-term and loss of business in the long-term; and hurts other stakeholders in various degrees. Besides, in firms where workers think for a living, the threat of work interruption can have a longer-term negative effect on productivity than the work interruption itself can have.

It was argued that today's workers are provided with great level of protection by the Canadian Labour Code. Since most of the collective bargaining disagreements are monetary and small, and not related to workers' life and safety, resorting to less adversarial methods for resolving bargaining impasse is recommended. The empirical evidence seems to suggest that binding arbitration tend to result in some sort of middle ground. Since the negative impact of work interruption can be significant on the worker, the economy and the public; it is recommended that the labour laws be revised to consider the types of work and the workers of the 21st century in order to minimize or eliminate work interruption as a result of collective bargaining impasse. Improvements in the labour laws are very important for today's knowledge-based economy.

BACKGROUND

Problem Definition

When a labour dispute goes beyond the negotiation table and results in a strike or a lock-out, the result is losses for the parties of dispute and the society. Work interruption hurts the labour in the form of lost wages and benefits; it hurts the employer in the form of loss of productivity in the short-term and loss of business in the long-term; and it hurts other stakeholders to various degrees due to interruption in economic activities. The organization (which encompasses the employer and employees) will also be negatively affected in the long-term if the workers in other organization of similar products and services are not unionized, because the customer in search of more reliable supplier will switching to the competitors.

In an organization whose employees are knowledge workers and whose output is a product of thinking, the employer loses not only during the work interruption, but will also lose prior to the work interruption due to lost productivity as long as there is a threat of a strike or a lockout. Unlike manual labour, if the knowledge workers do not have mental peace, their creativity and productivity suffers. Therefore, for the sake of the survival of business, mutual profitability and greater good of the public, the unions of knowledge workers and their employers should adopt dispute resolution mechanisms that do not result in work interruption.

Hypothesis

It is hypothesised that if today's employer and unions, especially those in knowledge work organizations, abandon strike and lockout as a tool for resolving impasse at the bargaining table and replace it with less adversarial approaches such as voluntary binding arbitration, its result will be better employer-employee relationship, higher productivity, stronger sense of belonging, better business profitability and less damage to the public and economic activities.

In present day where employer-union disputes are mainly monetary in nature and usually over small percentage of the total compensation packages and where safety or life of workers are not at risk [1], the justification for work interruption due to labour dispute is less justifiable and more damaging that benefitting. In other words, stakes are not high enough to put the workers through the pain and suffering of lost wages and job insecurity and to risk the future of business. In todays' globalized environment of product and service delivery, where the competition is extremely high, the labour actions that were proving beneficial in the 20th century can be extremely damaging in the 21st century.

The damage of work interruption and its threat is more severe to businesses and organizations that employ mainly knowledge workers. Not only because the productivity of the workers

suffer when the minds of the workers are not at peace, but also because the worker carry the knowledge asset of the organization in their head and can go wherever they please if the peace of the work environment is always under a threat.

There is no denying that labour actions of 19th and 20th centuries resulted in significant changes in labour-employer relations and significant gains for the workers; from which we are benefitting from today. However, because the labour unions fought to get better work conditions and changed the labour laws for the betterment of labour, does not mean that today's labour should still keep fighting with the same tools. Otherwise, it will be like a country continuing fighting after winning over a civil war. Why not put the arms aside and use diplomacy for resolving future issues and disagreements? Otherwise, we will not be enjoying the victory, and will not be getting any form of physical and psychological peace that our predecessors fought for.

Can unions still make further gains by resorting to strike as a tool of dispute resolutions? Research [2] [3] has shown that total compensation fought for by unions and offered to the employees by non-unionized companies, colleges and university are almost the same. When both unionized and non-unionized companies are in the same market and compete for the same jobs, they only win when the value of what they offer to the customer is competitive and better than the competitors. Naturally, the shareholders for all companies would expect the same rate of return on their investment. If the investors do not receive the expected rate return for their investment that they are making and the risks that they are taking, they will take their money out and buy shares of another company. Therefore, to see research results indicating that there are no significant differences between the total compensation of unionized and non-unionized workers is not surprising. A company can pay higher wages only if the management, the processes, and the labour of the company are highly efficient and deliver to customer the same product at a lower cost, i.e. saving through process improvements. However, on average all organizations may end up having the same level of efficiency because the competitors also invest in process improvements. Thus, in the long-run a company cannot maintain any significant competitive edge in the form of cost efficiency. In this case, there is an upper-bound to how much companies can pay in total compensation, which hard bargaining and strikes cannot change. There is also some type of a lower bound that the companies have to observe to be able to find skilled labour. Today the workforce has access to wage information from the entire market instantly; thus, unless there is an economic slow-down the lower-bound cannot be pushed too low. Companies will have to pay efficiency wages in order to attract and retain good workers.

A very good example of the effect of efficiency pay on employee retention and on the bottom-line is the case of Ford Motor Company. The Ford Motor Company, as is well known, increased

the pay of skilled workers from eighty cents a day to $5.00 a day in January 1914 [4]. It did so because its turnover had been so excessive that made labour costs prohibitively high; it was reported that Ford had to hire 60,000 people a year to keep 10,000. Even so, everybody (including Henry Ford himself, who had at first been bitterly opposed to this increase) was convinced that the higher wages would greatly reduce the company's profits. Instead, in the very first year, profits almost doubled.

Considering the market forces and the fact that the labour laws have provided the basic protections in terms of health and safety, work-hours, vacation, and over-time; the extras that today's labour demand are not significant enough to justify adversarial and war-like mentality. Voluntary binding arbitration is an alternative mechanism that is less adversarial and is gaining more and more support among the employers and unions in the private sector. If the private sector proves to be unable to find non-disruptive means of conflict resolution, the policy makers and legislators will have to act to introduce provisions in the labour code that is corresponds to the needs of today.

Methodology

This paper is based on the personal experiences of the author and a review of the literature on history of strikes, alternative dispute resolution mechanisms, legal provisions of strike and lockout and views of academics and labour organization on labour dispute resolutions. Although, the literature review covers many different forms of labour unions and jurisdictions, the focus is on unionized knowledge workers and the discussion is in the context of Canadian Federal Labour Code

INTRODUCTION

This paper presents the findings of a study on the effects of work interruption due to strike and lockout and a threat of work interruption on workers, management and owners of private organizations whose workers are knowledge workers and whose product and services is a product of thinking.

The term "knowledge worker" was first introduced by Peter Drucker in 1959 [5]. The definition has been expanded throughout the years; it differentiates knowledge worker from manual and assembly-line workers. The following are the most common definition used for knowledge workers [5] [6] [7] [8] [9].

- They think for living.
- They utilize their brains more than their hands to produce value.
- They take data and information and change them to knowledge, design and product.

- Their work is non-routine. They have mastered a body of knowledge (tacit and explicit) which they are able to control, protect and apply to create value for the organization.
- They are the carrier of knowledge. When they leave, the knowledge goes with them.
- They know more about their job than anybody else in the organization.
- They have become essential to organizational success as the global climate morphs into a knowledge economy.
- They have the knowledge important for the organization and often are the only persons having it.

Knowledge workers make a high percentage of Canadian workers. In government and crown corporations a large number of these knowledge workers are unionized. They are also unionized in some private or newly privatized companies. They can include civil servants, teachers, scientists, doctors, engineers, and lawyers. Forming unions and bargaining collectively are within the rights of most workers and can be very beneficial to workers because of the complexity of laws and financial and accounting matters of employment. Unfortunately, however, unions representing knowledge workers seem follow the same bargaining tools and tactics and negotiation methods as those of manual labour unions. Even though the large traditional manual labour unions have learned to innovate and adapt to the changing environment, some small and isolated knowledge worker unions find it difficult to change.

One of the major actions of labour unions is strike. Strike and refusal to work in the times when the lives of workers were at risk or where the unions form(ed) political movements and want(ed) to cripple or overthrow the ruling party may have been justifiable. Now, however, the labour laws, such as Canadian Labour Code, provide many provisions that protect workers' safety and fundamental rights. Therefore, the underlying reasons for resorting to strike are not as strong today as it may have been in earlier parts of last century.

This paper is based on the personal experiences of the author and a review of the literature on history of strikes, alternative dispute resolution mechanisms, legal provisions of strike and lockout and views of academics and labour organization on labour dispute resolutions. Although, the literature review covers many different forms of labour unions and jurisdictions, the focus is on unionized knowledge workers and the discussion is in the context of Canadian Federal Labour Code. The paper argues for and recommends the adoption of voluntary binding arbitration by employers and unions in the private sector. It also proposes possible courses of actions that policy makers could take to make the labour code suitable for all the types of workers of 21st century.

LITERATURE REVIEW

Unions and Associations

The Canadian Labour Code [10], in its preamble it states, “Canadian workers, trade unions and employers recognize and support *freedom of association* and *free collective bargaining* as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations.” Certified worker’s unions, societies, and associations that are legally empowered to talk and negotiate on behalf of its members can be very beneficial to both employees and the employers. Studies have shown that even some management liked to see that the workers have collective representation. However, the main concern raised by both sides is the adversarial positioning [11].

Although, unions bargain with employers primarily over wages, hours and working conditions, the materialistic elements of the union contract that are negotiated by the union correspond in a general way to the physical and material security requirements. But unions also serve another function by satisfying employees’ desire for self-expression, their wish to communicate their aims, feelings, complaints and ideas to others. Employees want management to listen to them, and the union provides a mechanism through which these feelings and thoughts can be transmitted. The union also administers a grievance system, a means by which employee complaints and problems are brought to the attention of management. Most unions also provide social and recreational activities that give their members a feeling of group acceptance and belonging [12].

The union movement has built a very large part of society, both in terms of the way people are paid, but also in terms of people's rights, according to president of the Canadian Labour Congress. The rights were said to include the right to fair wages, safe working conditions and compensation for injury, and equitable labour relations [13].

It was argued that the No. 1 reason why people join unions today was that they wanted to make sure that their health and safety was protected, and they wanted to be treated fairly. It was also argued that unionized labour had better pay, had fewer accidents at work, were more productive and drove the economy a lot more than the people who didn't make the wages that unionized labour made [13].

According Langille [14], Canadian laws governing unions are based on the American or Wagner Act model which was imported into Canada in the 1940s. Wagner Act named after the sponsor of the 1935 National Labor Relations Act in the United States [15]. While there are differences between the Canadian and American laws, they are said to have a lot in common, creating a “North American Model.” This model is designed to protect and structure the right to unionize,

to bargain collectively, to strike, and to have binding and enforceable collective agreements. This model also comes with labour relations boards and labour arbitrators equipped to protect employees from employer interference with their efforts to organize; to "certify" trade unions as "exclusive bargaining agents" for all employees in a "bargaining unit" when a majority has so chosen; to compel an employer to "bargain in good faith" with a certified union; to protect the right to strike to obtain an agreement; to compel both sides to accept the agreement, not to strike, and to proceed to "arbitration" of all disputes under it; to ensure that a certified union "fairly represents" all employees that it represents; and so on [14].

Strike and Lockout

Fudge and Tucker [16] provided the following definition for strike in the Canadian context, "The essence of a strike is the concerted refusal to work, and it is typically a protest against economic exploitation or political oppression." They mention that in Canada, however, political strikes are rare events. The freedom to strike was argued to be the principal means of making freedom of association and collective bargaining effective.

According to Brian Langille [17], a strike is a timely (and hence legal) cessation of work if it is engaged in by a group of workers who are negotiating (or renegotiating) their agreement with an employer, in an effort to induce the employer to come to terms. On the other hand, the employer can resort to lockout to induce the unions to come to its terms. The following discussions refer mainly to strike by workers; however, the discussion is equally applicable to lockout by employers.

The history of strikes in Canada reportedly started with the Toronto Typographical Union strike and the Trade Unions Act, 1872. It is reported that [13],

> *The Toronto Typographical Union takes up the cause of the "Nine-Hour Movement" and goes out on strike March 25, 1872, when its demands for a shorter work week are ignored. A few weeks later, on April 14, a parade is organized in Toronto to show support for the striking workers. Ten thousand people participate. George Brown, politician and editor of the Toronto Globe, hits back by launching legal action against the striking workers. At the time, union activity is still a criminal act under Canadian law. Brown has police arrest and jail 24 members of the strike committee for conspiracy. The arrests are much protested, and the Prime Minister, Sir John A. Macdonald, promises to repeal the "barbarous" anti-union laws. The Trade Unions Act is passed by Parliament on June 14, 1872, legalizing unions.*

The Trade Unions Act made it legal for workers to band together to fight for better conditions [18]. The aim of "Nine-Hour Movement" was to reduce the workday to nine hours from as

much as twelve [18]. The demand of the labour from 1872 until now has resulted in improving the working conditions of all workers by affecting the laws.

Now, Canada's Labour Code [10], Article 169(1), provides that, "the standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week; and no employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week." Article (174) states, "when an employee is required or permitted to work in excess of the standard hours of work, the employee shall, subject to any regulations made pursuant to section 175, be paid for the overtime at a rate of wages not less than one and one-half times his regular rate of wages."

An in-depth article by the Canadian Broadcast Company carries an interesting analysis of strike [18]. The article asks if strikes pay off. Then, it argues that it has to be answered on a case by case basis. There is one cost that it considered incomputable and states, "… strikes emphasize as nothing else can the 'us versus them' relationship between two groups of people who, in a perfect world, would have an effortlessly interdependent relationship. Labour and management need each other." The article goes on and says [18],

> *The posturing on both sides of a strike is predictable, with management claiming poverty and workers demanding what they see as their due. Spokespeople for both sides make insulting comments about the other group, impugning their honesty and, sometimes, their value. Onlookers watch the spectacle as if it were wrestling. What isn't seen clearly by watchers is the terrible human price. Though the rise of unions has meant that striking workers may get some small amount of money while picketing, a family that normally lives paycheque to paycheque faces quick crisis. That, of course, is what management wants.*

Hepple [19] in his paper titled "The Right to Strike in an International Context" focuses on two broad issues related to labour action. First he looked at the underlying values which have led to international recognition of the right to strike. Second, he wanted to determine whether, in the modern world of globalization and free trade, if there was any comparative institutional advantage in constitutionalizing the right to strike.

Hepple states that the explicit constitutionalization of the right to strike in 1946 in France, in 1948 in Italy, in 1976 in Portugal, in 1978 in Spain, and in 1994 in South Africa, was recognition and reward for the role that labour organizations played in the struggle against authoritarian governments and for democracy. Hepple conduces that in a pluralist society, where there are conflicting interests, participation of all interest groups is essential to achieve some "balance"

of power. Participative democracy can be strengthened by social dialogue. Collective bargaining and other forms of workers' representation are important examples of such dialogue [19].

Pope [20] writes that in the US the courts upheld a variety of restrictions on strikes without ever confirming or denying the existence of the right. U.S. law concerning the right to strike is characterized by a sharp disjuncture between theory and practice. The government has repeatedly claimed that international human rights norms, including the right to strike, are adequately protected by U.S. statutory and constitutional law. In practice, the Supreme Court has upheld restrictions on the right to strike without considering their effect on the ability of workers to influence their conditions of employment [20].

Pope [20] argues that under a narrow, economic view of workers' rights, it might be possible to justify a strike ban by pointing to an arbitration procedure that promised to produce fair wages, benefits and conditions.

Major Dates of Canadian Labour Laws

In 1900 the Federal Department of Labour was established [13] as a result of the Conciliation Act of 1900 that established voluntary conciliation of a labour dispute. The office is meant to assist in the prevention and settlement of trade disputes.

In 1944 the provisions on the certification of unions was introduced, the legal obligation for both parties to enter into good-faith collective bargaining, and prohibitions on unfair labour practices. The order was abolished at the close of the war, but similar provincial legislation was reportedly enacted across the country in 1948 [13].

In 1967, as a result of Canadian Union of Postal Workers strikes, the government extends collective bargaining rights to the public service, although some workers, like the RCMP and the military, are excluded [13]. Where the public servants are prohibited from striking, they are provided access to an alternative dispute resolution mechanism, typically binding arbitration to resolve bargaining impasse [16].

Knowledge Workers – the Workers of 21st Century

Peter Drucker wrote that the workers of 21st-century organizations are knowledge workers who are the most valuable asset of their organizations. The workers of 21st century have different skills and operate in different work environment compared to traditional manual and assembly line workers. The contributions, demands and vulnerabilities are different from those of the manual and assembly liner workers. Therefore, organizing highly skilled knowledge workers using the traditional labour unions blueprint can cause problems of workers motivation, productivity and retention. Besides, when the organizations try to treat, manage,

reward and compensate knowledge worker using the same formulas that are used from manual labour, they will get unfavourable results.

Neslon and McCann [21] in their paper on knowledge worker's retention and performance state that knowledge worker retention is a critical challenge for today's organizations facing increasing global competition with its demands for even more such workers. They argue that while many factors impact organization financial performance, their research indicated that successful knowledge worker retention was significantly related with higher reported financial performance of organizations.

Knowledge worker retention is enhanced when they see that their top leaders understand, value, and support them [21]. A culture that values interpersonal relationships and collaboration, a team orientation, and respect for people is argued to result in longer tenure. Other retention drivers are said to include a sense of connection between an employee's job and organization strategy and the organization's success, a reputation of integrity, and a culture of innovation [21]. The organization should show willingness to meet their personal and family concerns and provide job recognition, career advancement opportunities, an attractive salary, and career and intellectual challenges [21].

Chen [22] writes that managing the knowledge worker of today is much different from managing the rank and file employees of the past. It is important to understand the knowledge workers, their traits and personalities, before learning how to best manage them. Chen [22] states that one could argue that manufacturing line worker add value to the car on the production line because their knowledge is in tightening the same bolt in the same place on every car that passes in front of them. This repetition work, Chen argues, is not "knowledge" per se. It is application of repetition of what has been taught to them. The workers did not study the entire process of building a car and decide that they needed to tighten this bolt. They are shown by a supervisor or more experienced workers that this was their task.

According Kappes and Thomas [23], a knowledge worker receives data/information from outside source, adds value to the information, and distributes value-added products to others. Knowledge workers are said to have a much higher need than other employees to feel that they're contributing to a larger whole and that their organization is doing meaningful work. These workers are said to need to know the broader context in which they work: the industry direction, the company's positioning within the industry, key corporate initiatives, specific performance goals, and how the individual's performance relates to those factors. Getting knowledge worker engaged in the whole of the business will enable them to feel more involved

and therefore increase their knowledge contributions [22]. Hence, it increases the corporate effectiveness. Placing them in positions of "us versus them" is a strategic and tragic loss.

ANALYSIS

Primary Sources Findings

The following paragraphs present an argument against the suitability of strike for unionized knowledge workers. The author has observed an engineering company whose product is engineering design and its technical workers are unionized "knowledge workers." In the opinion of the author, the union representing the workers is using the general manual labour unions blueprint (Wagner Model) for collective bargaining on behalf of its members and for labour actions to dispute resolutions.

During the latest collective bargaining this union went on strike, and in the author's judgement the net result was loss for both the employer and the workers. The strike soured the relationship with the employer, wasted union's budget, put the union into debt, resulted in increased union dues, drove business to competition, and forced the employer to take drastic post-strike measures such as hiring dozens of contractors to prepare for next round of bargaining.

Most engineering companies don't have monopolistic power anymore. Besides, not all knowledge workers and engineers in private Canadian firms are unionized; unionized engineers are a minority in engineering industry. The strike and threat of strike are forcing the employer to hire contractors because in accordance to the Canadian Labour Law, the employer cannot hire replacement workers during the bargaining period. The employer is also outsourcing the work to its sister companies. On the other side of the "us versus them" line, the union is building a war chest by increasing union dues (an indirect threat of another strike).

In response to the treat of strike, the parent company has started controlling all contracts that the subsidiary used to fully control and gives to the subsidiary only small job of very niche in nature. Only a small percent of subsidiary's work is niche, the rest can be done by other companies; and the parent company could slowly take away more and more of work from the subsidiary. With reduced work orders, the employer will be in a position to implement lay-offs. Based on the seniority system, most of the young and energetic worker will be forced out and some of those who have been with the union longer, even if they have no concern about the health of the company, will have to be kept.

To examine this case from the context of labour law, one could see the following. The three labour rights and freedom that the current unions are created based on are freedom to

associate, the right/freedom to bargain collectively, and the right to strike. The labour code provides many provisions and protection for workers and also allows for strike and lockout. However, if the union and the employer give up the arsenal of strike and lockout, both sides will benefit.

Since most of disputes are monetary and over small percentage of total compensation with no threat to health and safety of workers, can the labour the code direct all labour dispute to arbitration instead of the picket-line? It may be less costly for the parties, better for the economy and more dignified. Even, in the unlikely, worst case scenario of a lopsided award by an arbitrator, the differences and stakes are not high enough to warrant resorting to strike and lockout. Considering the psychological cost of extended work disruption and straining the employer-employee relationship, the result of binding arbitration will be better for the both sides of dispute and the society as a whole.

The author believes if the adversarial and war-like positioning is removed from the collective bargaining, more workers will be attracted and benefit from the collective contract negotiation simply because the legal and account matters are so complicated that not everyone has the time to study them or the ability the understand them. Dedicated labour relation experts, lawyers, pension experts, and negotiators that are hired by the unions can add value to the workers' employment contract. Even the management could benefit from collective bargaining by delegating some of the details and explanatory work to the unions.

Secondary Sources Findings

In this section unionization is evaluated based on the studies reported in the literature. This discussion in combination to the primary source presentation given above is used to make final recommendations. Before going further, it is worth noting how much unionized labour is better off compared to their non-unionized counterparts.

A Survey of 250 Canadian companies (with 240 to 30,000 employees, a total of more than 450,000 workers) in 2000 and 2004 showed that the total financial compensation of employees working in unionized organization was not significantly different from those working in the non-unionized organizations. This is what the report concludes [2], "… surprising, more unionized firms did not differ significantly from less unionized firms in their proportions of base pay, group performance pay, or organizational performance pay in either time period."

Hedrick et al. [3] examined the impacts of faculty unions on faculty salaries in colleges and universities, from 1,060 institutions and of 24,070 faculty members based on data from 1988 to 2004 [3]. After making the necessary adjustments for cost of living and local factors, they found that the union wage premium was statistically insignificance.

Arbitration

Voluntary arbitration is one in which employer and union voluntarily agree to contract arbitration. In this case, both sides agree – even before a dispute – to refer it (if necessary) to arbitration, rather than a strike or lockout.

In the literature there are many cases where both side of the labour dispute prefer voluntary binding arbitration to resolve collective bargaining impasse; however, there are also cases where either the employer- or the employee-side refused to accept any alternative to strike and lockout. Below are some example of the three types of cases.

The CAW referring to data from the Ontario Ministry of Labour stated that there had been at least 125 cases in the past ten years of unions and companies which used voluntary contract arbitration. In some cases, these unions and employers were reported to have used voluntary arbitration on a one-time basis. But in several cases, they had established ongoing voluntary arbitration schemes. According to CAW, voluntary contract arbitrations are common in the construction industry. Others were reported to have used voluntary arbitration are the Society of Energy Professionals with the Ontario Hydro; the Teamsters with Securicor; Canadian Union of Public Employees (CUPE) with the City of Ottawa; and the Steelworkers with major U.S. steel companies (supported by the Canadian leaders of the union) [12].

Rose [24] reported that there is substantial evidence that arbitration protects the public interest by preventing strikes. It was found that the free-to-strike model produces more strikes and fewer arbitrations. Hence, dispute costs are higher since strikes are more costly than arbitrations. However, strike systems save on wage costs since wage settlements are lower than under arbitration [24]. That is why for public sector employees the governments initiated changes to restrict the use of arbitration and control outcomes.

Cases where Voluntary Arbitration was agreed on

B.C. Ferries workers gave up their formal right to strike. This was considered to have worked in their favour over the long haul according Ken Thornicroft, a University of Victoria labour law expert [25]. Professor Thornicroft suggested that the change, contained in a ruling released by arbitrator was something that other unions representing similarly "essential" workers should consider. It was reported that according to the ruling, the union would not be able to legally strike at the end of the new deal. Instead, the ruling orders the union and company to go through a formal negotiation pattern to determine their next contract, a process that would conclude, if necessary, with binding arbitration.

B.C. Ferries President David Hahn declared that the ruling would ensure a period of stability on the water. The arbitrator's report called it [25] "a new and fresh approach to collective bargaining."

The ruling established a permanent three-member bargaining dispute resolution panel. It also called for the union and company to jointly conduct a salary and benefits survey "of relevant comparable employers" to use in working toward a new collective agreement. In the case of a stalemate, it called for mediation, followed by binding arbitration.

On October 15, 2007 Magna auto parts company that employs over 18,000 people in 45 Canadian plants and the Canadian Auto Workers (CAW) signed an agreement, according to which the union would not strike if there was a negotiation impasse [26]. According to the agreement, the CAW "gave up the strike weapon" in negotiations with Magna and would rely on union-management collaboration. If there were unresolved contract disputes in contract bargaining every three years, they would be referred to final-offer selection before a mutually selected arbitrator. There would be no strikes or lockouts [27].

Cases where Voluntary Arbitration was not Chosen

The Toronto Star reports [28] that the Toronto Transit Commission (TTC) wanted to negotiate a no-strike agreement with construction unions working on major streetcar line expansions across the city, to ensure labour peace leading up to and beyond the 2015 Pan Am games. But some councillors feared that such a deal would cost taxpayers millions, possibly tens of millions more, in exchange for unionized trade workers giving up the right to strike, thus blocked the move.

The TTC chair wanted binding arbitration agreement to ensure that there would be no delays or extra costs due to labour shortages or disruptions. The Central Ontario Building Trades, which represents about 70,000 construction workers, was also considering "giving away" the right to strike so that they could count on seamless construction. The TTC didn't have a no-strike clause during construction of the $1 billion Sheppard subway line. A three-week strike in 1998 by operating engineers and heavy equipment operators brought work on the line to a standstill [28].

In Ottawa in September of 2009 the city officials cut a deal with union leaders (Amalgamated Transit Union Local 279) that would make it mandatory for all future labour disputes to be settled by an independent third-party arbitrator [29]. City councillors unanimously approved the joint proposal in May. However, when the deal was put for vote, over 60% of the members voted against the option of sending all future labour disputes automatically to binding arbitration and instead voted to keep their right to strike [30].

Bargaining agent for 12,000 Crown Employees of Ontario (AMAPCEO[1]) declared in 2004 that they strongly supported the use of fair and independent binding interest arbitration as a way to resolve an impasse at the bargaining table rather than disruptive strikes or lockouts [31]. Over 95% of respondents to their internal survey supported this position. They declared, "The support for independent binding interest arbitration is fully consistent with and at the same time symbolic of the professional problem-solving approach that AMAPCEO members take to their jobs every day." However, in the case of AMAPCEO, the employer, the Government of Ontario wanted the traditional strike and lockout as a way to resolve an impasse at the bargaining table and did not agree to binding arbitration.

DISCUSSION

With the changing in the nature of works, market forces, and competition, labour organization need to adapt to its time and environment. Change of thinking in response to the demand and realties of today was declared even by the Canadian Auto Workers (CAW), which is considered a very strong and militant labour union [32].

CAW declared [33] "We've recognized for years that unions must turn around the decline in union membership. First, we'll try harder. We'll put more money into organizing campaigns. We'll try new techniques. We'll reach out to new communities: new Canadians, workers of colour, young workers. Finally, we also need to be thinking about *new ways to organize* workers." The CAW had reportedly proposed several of these new strategies in a discussion paper to their 2006 Constitutional Convention, which was reported to have included negotiating voluntary recognition agreements with employers. The 2006 paper had been adopted unanimously by the convention.

The CAW claims that today in Canada's parts sector, they faced a very dangerous situation. Because of all the layoffs and plant closures, union density was falling. The CAW declared that they have to "change practices" to turn things around. According to the CAW, the concern was whether it is flexible and creative enough to find new ways of building, when they find that the old ways aren't working enough.

A US studies [11] based on a survey of 2,400 workers found that over 85 percent of worker of wanted a form of collective representation. But 60% of them favour the less confrontation from of labour-management committees.

Most of the demands of the current labour unions are monetary in nature, whether it is the base pay, extra vacation days or sick days, they all come down money, but the difference

[1] Association of Management, Administrative and Professional Crown Employees of Ontario

between the employee and employer positions are usually only small percentages of the total compensation. If unions and employers discard the arsenal of "strike" and "lockout" and stop digging trenches and building walls, both sides will win from agreement and contract negotiations conducted in less adversarial environment. The parties to a collective bargaining will be much better off if they sign an agreement ahead of the contract negotiation declaring that they would give up the right to strike or lockout. Conflict resolution paths, such as conciliation, binding arbitration, or shared decision making in the company can be adopted as the alternatives.

When the strike and lockout are available in the arsenal of the parties, each side will spend significant resources to gather ammunition and build fortresses. The unions increase union dues or borrow money; the company hire contractors and spend money on fallback options. Behavioural studies have shown that in adversarial positions, unfortunately, even rational people make irrational decisions. This could be due to egos, face saving, pressure of time, dwindling of funds, etc.

When everything becomes a bargaining chip and goodwill disappears, the employer hardly gives anything without a fight. The sides are fighting from different positions, instead of working for a common interest. When the differences are small, the strike hardly pays for itself. The treat of strike not only hurts employer-employee relations, but it also forces the customer to find alternative suppliers for reliability, thus, the business, and as a consequence, the workers lose.

Another loss to the workers results from the hiring of replacement-contractors by the company/employer. According to Canadian Labour Code (§94.2.1) the employer cannot hire replacement workers after the date on which notice to bargain collectively is given. This means that the employer, faced with a threat of strike, will have to pack the house with all the replacement workers they need before notice of bargain is given. This will not only take away work from the union members, but will also result in significant loss of money to company and consequently to the union. Additionally, the employees will lose the opportunity to learn on the job, while the contractors will have the freedom to take the acquired knowledge to the next higher bidder.

Currently most of the private companies dread and are hostile to the unionization of labour because of the way contract negotiations are handled and drag on. If the laws are updated and practices are changed such that it will require flexibility into the labour dispute, companies may not be so hostile. Surveys and studies have shown that management and companies would tolerate and in some case want the member to form associations and express their views collectively, but because of the hostilities they are not forthcoming to traditional unions. In

today's fast paced and advancing knowledge base economy, the management will need to hear the employees inputs and concerns to fix things before it is too late; the unions can provide the platform for such communications.

If the unions and companies take less adversarial positions, they will have a lot to gain. In adversarial positions, not only contract negotiations don't go well, but there is negative effect of motivation, productivity, loyalty and sense of belonging. Adversarial relations and attitude of indifference can also lead to unethical and illegal behaviour. Sutton [34] reported the result of study done at the Ohio State University.

> *Jerald Greenberg, a management professor at the Ohio State University, provides compelling evidence that compassion affects the bottom line in tough times. Greenberg studied three nearly identical manufacturing plants in the Midwest that were all part of the same company; two of them (which management chose at random) instituted a temporary 10-week pay cut of 15% after the firm had lost a major contract.*
>
> *At one of the two, the executive who conveyed the news did so curtly, announcing, "I'll answer one or two questions, but then I have to catch a plane for another meeting." At the other one, the executive who broke the news gave a detailed and compassionate explanation, along with apologies and multiple expressions of remorse. He also spent a full hour answering questions about why the cost cutting was necessary, who would be affected, and what steps workers could take to help themselves and the plant. Greenberg found fascinating effects on employee theft rates. At the plant where the curt explanation was given, the rate [of theft] rose to more than 9%. But at the plant where management's explanation was detailed and compassionate, it rose only to 6%. (At the third plant, where no pay cuts were made, the rate held steady at about 4% during the 10-week period.)*
>
> *After pay was restored at the two plants, theft rates at both returned to the original level of about 4%. Greenberg's interpretation is that employees stole more at the two plants where cuts were made to "get even" with their employer, and stole the most at the plant where managers exhibited a lack of compassion because they had more to get even for. This suggests that compassion from a boss adds corporate value – in good times and in bad. What's more, it's free.*

Wells (1997) [35] wrote that labour unions in Canada and the US were facing massive economic restructuring and deepening political marginalization. On the US side, in an environment of accelerating managerial and state aggression against unions, labour militancy was increasingly being replace by calls for greater cooperation or 'jointism' with management to create more

flexible production relations based on models of the 'high performance workplace'. In Canada, the changes in unions' attitude have been slow, but are coming.

In the context of mounting employment insecurity, the CAW has taken the view that active union involvement in a broader range of management decision-making, rather than militant opposition is necessary. While the CAW used to oppose 'partnership' with capital on the grounds that it implied equality of power between labour and capital, in practice, however, CAW national and local leaders have used the **language of partnership** [35, 33]**.**

A significant proportion of non-union employees constantly feel a need for a greater voice and participation in decision-making at workplaces. However, they found employees seemed to be frustrated with the current adversarial relationships between unions and management and showed more interest in a less confrontational schemes for worker representation [12].

Freeman and Rogers (1999) [11] conducted and extensive survey and study of workers to bring their voice into the debate. Freeman and Roger's Worker Representation and Participation Survey (WRPS) gathered workers' views towards how workplaces operated and how their workplaces might be improved. They surveyed more than 2,400 workers in the US. The followings are some excerpts from Freeman and Roger's book on workers wants and desires [11]:

- American workers wanted more of a say/influence/representation/participate/voice at the workplace that they now have, because they thought it would directly improve the quality of their working lives and make their firm more productive and successful (which also enhances their work lives over the long run).
- Employees wanted greater workplace participation as individuals and as a part of groups. The wanted to have collective voice on issues such as workplace health and safety, pay and benefit plans. Workers believed that such a collective voices will benefit the firms as well as them.
- Workers wanted cooperative relations with management and a positive relation with management, not a war.
- Workers wanted some measure of independence and protection of that independence in their dealings with management. Union members want to maintain union representation, and many non-union workers also favoured a union. An even larger share of workers wanted some form of a labour-management committee that stopped short of collective bargaining but in which they had some significant independence in selecting representatives and resolving disputes.
- Unionized workers strongly supported their unions, and the vast majority would vote to retain them in an election for union representation. However, non-union workers were

reported to have a less positive view of unions, but about one-third would have voted for a union if given the opportunity.

- Given a choice between improving their position at the workplace through labour-management committees, unions, or other employee organizations that collectively bargained with management or increased government regulation, about 25% of workers would choose union or union like organizations, and about 15 percent would opt for more regulation. Some 60% would prefer labour-management committees, where workers would have varying degrees of independence from management, often including electing representatives and carrying disagreement with management to an outside arbitrator. Overall, 45% of employees wanted a strongly independent work place organization (which only unions provide in the current system), 43% wanted an organization with more limited independence from management, and the remaining workers wanted a workplace in which management alone rules.

Based on Freeman and Roger's finding, it seems that if workers groups have the collective power to represent workers but not resort to labour actions such as strike, more workers will to join [11]. Non-adversarial union representation would allow associations and societies to form in more work places. If Canadian unions are determined to stop the decline of union density in the private sector, then, they should change their mode of operation. This seems to have a higher chance of winning management and companies' support as well, because it will make contract negotiation easier and as the following paragraph says, management also want workers to have a collective voice.

Freeman and Roger found that much of management favoured a more substantial employee voice in joint committees. To their surprise, nearly one-half of managers said that they favoured employees electing their own representatives to such committees. According to them, the workers wanted a more varied system of participation and representation with a more cooperative and equal relationship to management [11].

CONCLUSION

The cries for need of change in North American union models come from all corners. According to Holmes [36] the changes in the organizational structure of production in the automobile industry have rendered existing structures of union representation and collective bargaining less effective. It was asserted that there was a pressing need for the labour movement to develop new ''spatial fixes'' to address new economic realities.

Haiven [15] argues that highly skilled technical worker such as engineers and technologists are fundamentally different than unskilled workers. Exclusive reliance on the old Wagnerist organizing pattern is well past its prime and prevents unions from embracing new patterns. Haiven warns that even where unions have succeeded in establishing the more traditional Wagner pattern representation for highly skilled technical workers, their success may hinge on unconventional methods. Haiven said, “Unions need to...explore innovations that in effect will increase the demand for their services. The labor movement cannot assume that workers will accept unions in their current form, nor can labor define the aspirations of its potential members.”

It is argued [15] that any resurgence of labor early in the twenty-first century is likely to depend on the ability of existing or emerging unions to identify and respond to the job related needs of substantial concentrations of workers who have unmet “aspirations for industrial justice.” But employers must not be left out of the equation. If it is accepted that employers have problems that are solved only through negotiation, then unions increase their own chances of success in representing workers by addressing these problems. The more unions can help solve employers' problems, the less employers will resist unionization without even being aware of doing so, because, as Haiven claimed, every quantum of diminished employer resistance is a boon to unions [15].

There are precedents for unions giving up the right to strike and replacing it with voluntary binding arbitration or getting more say in their company’s decision making. This is in addition to hundreds of unions who are legislated not to strike. Are those workers any worse off? Research does not show that these workers are at loss. On the contrary, the government is concerned that binding arbitration results in higher costs. Magna International and Canadian Auto Workers and Marine Workers' Union workers and B.C. Ferry have signed voluntary on such moves. Reportedly there are at least 125 cases of unions who have signed on for voluntary binding arbitration [27]. Professor Ken Thronicroft of University of Victoria was reported stating, "The empirical evidence seems to suggest that arbitrators don't really want to piss either side off, so there's a tendency to find some sort of middle ground [25]."

In companies where the work is “thinking” and the product is “knowledge based creation,” there is nothing more damaging and costly to the employer than having a workforce whose mind is preoccupied with labour dispute. Any employer who would want to stay in business would like to have a thriving workforce and vitality. Most employers competing for qualified workers would pay efficiency wages and provide learning opportunity to attract, retain and motivate productive human resources. However, if there is a perpetual and period threat of work interruption, and thus loss of income, due to strike or lockout, productivity drops

significantly. Unlike, and assembly-line or construction site worker, a knowledge worker needs a reasonable peace of mind to be creative and productive.

As discussed above a threat of strike, on the other hand, will force the employer to slowly outsource work or move work and contracts to sister companies. Besides, if the competitors workforce are non-unionized, the company does not have a monopolistic market power where the service can be bought from competitors, the customer will slowly in search of predictability and stability will take their business elsewhere. This is more applicable when the competition offers some form of stability. Neither the union members nor the employer wins!

RECOMMENDATION

The primary data as well as the literature review showed that while the traditional labour practices for resolving an impasse at the bargaining were effective and were needed in the past, today most of the disagreements are monetary in nature with insignificant difference between employer's position and union's position. The small monetary differences are not enough to justify resorting to strike or lockout. Besides, the nature and composition of work and worker of the 21st century has changed. The workers are mostly knowledge workers, who carry more knowledge their heads than what the organization will have without these workers.

The traditional union practices and dispute resolution for today's worker results in demotivation, loss of productivity, loss of business and at the end losses for the workers and the publics. To Minimize the negative impact of collective bargaining impasse, it is required that the labour laws are changed and updated to adapt to the types of work and workers of the day, and minimize or eliminate strike and lockout actions. The law could prescribe a monetary equivalent threshold before unions can even call a strike vote. Even then, two-third of membership votes in support of a strike should be required to make it legal. In absence of such as provisions, many of knowledge based organization can suffer significantly from the actual and the treat of work interruption. Labour law can make a distinction, similar to Belgium, between white- and blue-collar workers [37].

If the union movement is to survive and prosper, it must abandon its Wagnerist way of thinking [15]. The application of Wagner Act has resulted in employers becoming dreadful of unions, and unions sometimes push the limits to the point of self-annihilation. Union leaders instead of digging trenches should try to motivate their members to work towards membership and organization's collective gains and get the employer understand the value of its members.

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