Labour Relations in Canada

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TRU
Open Press

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Contents

Introduction

Labour relations are a fundamental component of Canada's social, economic, and legal landscape, influencing the daily lives of millions of workers, employers, and union members across the country. In this text, we explore the dynamic and evolving relationships between unions, employers, and governments, examining how historical developments, legal frameworks, and workplace realities shape worker-management relationships and the broader world of work. Whether you are a student new to the subject, an HR professional, or someone interested in understanding how Canadian workplaces and unions function, this book offers a comprehensive overview of the key concepts, processes, and issues that define labour relations today.

The book begins with a broad overview of the labour relations landscape at the end of 2023, often referred to as the "year of the union" due to high levels of organizing activity and labour disputes (Vescera, 2023). This period in Canada was heavily shaped by the global COVID-19 pandemic and low unemployment rates. However, these moments are temporary. At the time of writing this introduction (2025), Canada is in the midst of a tariff war with the United States, and unemployment has risen to over 7%. As a result, the emphasis on workers has shifted from strengthening workplace rights and union activities to protecting jobs and employment.

In the most recent Canadian election (May 2025), the Liberals once again formed a minority government. However, the labour-friendly New Democratic Party (NDP) lost its official party status, holding only seven seats in Parliament. While the long-term implications for the Canadian labour movement remain uncertain, this text demonstrates how government policy and labour relations are deeply interconnected. Therefore, readers are encouraged to consult current data sources and legal frameworks for the most up-

to-date information. Links have been provided throughout the text to support this.

Chapter Summary

Chapter 1 — Introduction to Labour Relations

This chapter introduces the foundations of labour relations in Canada by defining key terminology and concepts essential to understanding the field. It examines current rates of union representation, highlights the value and relevance of studying labour relations, and outlines the key differences between unionized and non-unionized workplaces. This chapter provides the necessary context to explore the complex relationships between employers, employees, and unions throughout the rest of the text.

Chapter 2 — The Legal Framework

This chapter examines the legal framework that governs labour relations in Canada. It introduces the key laws and regulations that shape union-employer relationships and explains how these laws are applied in practice. The chapter also examines the history and significance of the Canadian Charter of Rights and Freedoms, highlighting its impact on workers' rights and labour relations nationwide.

Chapter 3 — Labour History in Canada: The Early Years

This chapter explores the early development of Canada's labour movement during the period of industrialization. It examines how industrialization and capitalism created new working and living conditions that led to the emergence of Canada's working class and a growing desire for union representation. The chapter compares the roles of craft guilds and early unions, highlighting both their

similarities and differences. It also considers the unique experiences of Indigenous Peoples in Canada as they engaged in wage labour and interacted with unions.

[This chapter has been adapted from "Rise of a Working Class" in *Canadian History: Post-Confederation* by John Douglas Belshaw (2016), which is licensed under a CC BY 4.0 license.]

Chapter 4 — Labour History: A Growing Movement

This chapter traces the key events and turning points that have shaped the history of labour relations in Canada. It examines how significant historical moments such as the Nine-Hour Movement and the Winnipeg General Strike influenced the development of modern labour laws and contributed to the current structure of union-employer relationships. By connecting the past to present-day practices, this chapter helps explain how Canada's unique labour relations system has evolved.

Chapter 5 — The Union Question

This chapter examines why and how unions form, introducing key theories of union formation and exploring the various reasons workers seek unionization. The chapter distinguishes between various types of unions and outlines the structure of unions and the broader labour movement in Canada. It also discusses union philosophy and highlights how democratic principles are embedded within the Canadian labour movement.

Chapter 6 — Union Certification

This chapter examines the process of union organizing, from the initial steps workers take to form a union to the formal certification process required under Canadian labour law. It also explores some of the elements of the certification application and how an appropriate bargaining unit for representation is defined. The certification process often results in a response by management. This chapter also explores the nature of these responses and what

constitutes an illegal activity that could result in unfair labour practice complaints.

Chapter 7 — Management of Labour Relations

This chapter explores the diverse perspectives that managers and Canadians hold toward unions and unionization. It examines public attitudes, employer viewpoints, and the factors that influence these opinions. The chapter also explains the range of strategies managers may adopt in response to unionization efforts within their organizations.

Chapter 8 — Resolving Collective Bargaining Disputes

This chapter examines the various methods employers and unions use to resolve disputes during collective bargaining. It discusses the prevalence of strikes and lockouts in Canada, outlines the legal preconditions required for these actions, and explores the motives and functions behind work stoppages. The chapter also explains the role of picketing, the use of replacement workers, and the various third-party interventions available to help resolve bargaining impasses.

Chapter 9 — Grievance Arbitration Process

This chapter explores the grievance and arbitration process in unionized workplaces. It differentiates between various types of grievances and outlines the key steps involved in resolving disputes through the formal grievance procedure and arbitration. The chapter also explains important legal concepts, such as procedural onus and standard of proof, while introducing alternative methods that can be used to resolve grievances outside of arbitration.

Note From the Author

Readers may notice that, at this time, a chapter on "Collective Bargaining" has not been included. This is currently under development. In the meantime, you may want to refer to "Chapter 8: The Negotiation Process and Strikes" (pp. 149-162) in *An Introduction to U.S. Collective Bargaining and Labor Relations* (Katz et al., 2017).

This reading is a chapter from a US e-text written by three prominent industrial relations scholars. In this chapter, they describe the collective bargaining process and its sub-processes, which have been the prevailing framework used in the US and Canada since the 1960s. Check your institution's library for a copy.

References

Belshaw, J. D. (2016). *Canadian history: Post-confederation*. BCcampus. https://opentextbc.ca/postconfederation/

Katz, H. C., Kochan, T. A., & Colvin, A. J. S. (2017). *An introduction to U.S. collective bargaining and labour relations*. ILR Press.

Vescera, Z. (2023, December 22). *How 2023 became the year of unions*. The Tyee. https://thetyee.ca/News/2023/12/22/How-2023-Became-Year-Of-Unions/

Accessibility

The web version of Labour Relations in Canada has been designed to meet Web Content Accessibility Guidelines 2.0, level AA. In addition, it follows all guidelines in Appendix A: Checklist for Accessibility of the Accessibility Toolkit – 2nd Edition.

Includes:

- **Easy navigation.** This resource has a linked table of contents and uses headings in each chapter to make navigation easy.
- **Accessible videos.** All videos in this resource have captions.
- **Accessible images.** All images in this resource that convey information have alternative text. Images that are decorative have empty alternative text.
- **Accessible links.** All links use descriptive link text.

Accessibility Checklist

Element	Requirements	Pass
Headings	Content is organized under headings and subheadings that are used sequentially.	
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Images	Images and text do not rely on colour to convey information.	
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Tables	Tables do not have merged or split cells.	
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Links	The link text describes the destination of the link.	
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Links	Links to files include the file type in the link text.	
Video	All videos include high-quality (i.e., not machine generated) captions of all speech content and relevant non-speech content.	
Video	All videos with contextual visuals (graphs, charts, etc.) are described audibly in the video.	
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H5P	All H5P activities that include images, videos, and/or audio content meet the accessibility requirements for those media types.	
Font	Font size is 12 point or higher for body text.	
Font	Font size is 9 point for footnotes or endnotes.	
Font	Font size can be zoomed to 200% in the webbook or eBook formats.	

Known Accessibility Issues and Areas for Improvement

- N/A

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Other Formats Available

- In addition to the web version, this book is available in a number of file formats, including PDF, EPUB (for eReaders), and various editable files. The Digital PDF has passed the Adobe Accessibility Check.

Acknowledgements

Author's Acknowledgements

This open text began as a 'curated collection' of labour relations materials. The original intent was to develop more engaging and current content to support students who are studying labour relations in Canada. I also wanted to make the content flexible and easy to update, since changes in governments and laws often directly impact the labour movement and employment. Finally, I aimed to make the content accessible to other faculty and students across Canada at no cost to them.

Over several years, I created various pieces of content; however, working with these materials and supplementing my courses with other texts did not yield the best student experience. I realized more was needed, and with the support of the Thompson Rivers University Open Press team, I decided to develop an open textbook. Taking on the work of redeveloping the TRU Open Learning Labour Relations in Canada course with open-source materials provided the final impetus to complete this in 2024.

I am incredibly grateful to the TRU Library, Centre for Excellence in Teaching and Learning (CELT), and the TRU Open Education Resource Development Grant (OERDG) Program for 2021/22 for the initial grant that helped me start this project. Dr. Christine Miller was my mentor and technical guide in the early development

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This project has been a labour of love, driven primarily by my desire to create an interesting, engaging, and accessible learning experience, but also fueled by my passion for labour relations. I am thankful to all my students over the years who have shared their feedback about the course and these materials as well as their reflections about the interest they gained in the subject from taking my classes and participating in experiential exercises. This is, of course, primarily for you.

About Melanie Reed

Melanie teaches human resource management in the Bob Gaglardi School of Business and Economics at Thompson Rivers University, working closely with colleagues and students to create unique experiential learning opportunities. Melanie is an award-winning

case writer and teacher with an interest in ethics of care and how it can manifest in organizations. Melanie also has pedagogical and research interests in labour relations, social enterprises, and non-profit organizations. She is a member of the Innovation for Social Good (ISG) Research Cluster at TRU.

Melanie has worked alongside, managed, taught, and mentored HR professionals for almost 20 years. She is now giving back to the profession she loves by teaching and mentoring early career HR professionals to become the confident, successful, and credible organizational enablers they are meant to be. She is the host of The HR Mentor podcast that offers advice on job seeking and the HR profession to aspiring HR Professionals.

— Melanie Reed, June 2025

Labour Relations in Canada by Melanie Reed, TRU Open Press has adapted chapters and excerpts from the following high-quality resources:

- "Rise of a Working Class" from *Canadian History: Post-Confederation* by John Douglas Belshaw, which is licensed under CC BY 4.0 license.

Land Acknowledgement

Thompson Rivers University (TRU) campuses are situated on the traditional lands of the Tk'emlúps te Secwépemc (Kamloops) and the T'exelc (Williams Lake) within Secwepemcúl'ecw, the traditional and unceded territory of the Secwépemc. The rich tapestry of this land also encompasses the territories of the St'át'imc, Nlaka'pamux, Tŝilhqot'in, Nuxalk, and Dakelh. Recognizing the deep histories and ongoing presence of these Indigenous peoples, we express gratitude for the wisdom held by this land. TRU is dedicated to fostering an inclusive and respectful environment, valuing education as a shared journey. The TRU Open Press, inspired by collaborative learning on this land, upholds open access principles, and freely accessible education for all.

Resource Development Team 2025

The Open Press combines TRU's open platforms and expertise in learning design and open resource development. TRU Open Press supports the creation and reuse of open educational resources, while encouraging open scholarship and research.

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1. Introduction to Labour Relations

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Learning Objectives

- Explain labour relations terminology.
- Discuss the rates of union representation in Canada.
- Explain the value of studying labour relations.
- Describe the difference between unionized and non-unionized workplaces.

What is Labour Relations?

When most people in Canada think about labour relations, a specific image surfaces: workers holding signs as they picket in front of their workplace. In reality, about 95% of collective bargaining exercises in Canada conclude successfully without a **strike** or **lockout** (United Food and Commercial Workers Union Canada, n.d.).

Strikes and lockouts are generally a last resort to resolve collective bargaining. However, that does not mean these two methods are

unnecessary; strikes and lockouts are crucial for protecting the rights of **unions** and employers.

With that in mind, labour relations is so much more than strikes and lockouts. Studying labour relations means diving into many research areas, including history, workers' rights, law, politics, motivation, negotiations, conflict resolution, global issues, social activism, and human resource management.

According to Hebden et al. (2020), the term **labour relations** refers to "the study of employment relationships and issues between groups of employees (usually in unions) and management, also known as union-management relations." Industrial relations can sometimes be used interchangeably with labour relations.

Some scholars prefer to use the term labour relations only when referring to union-management relations. For example, McQuarrie (2015) argues that the term labour relations focuses too much on the union (labour) side of the relationship; in contrast, the term industrial relations aligns more with how the Canadian federal government uses the term. Specifically, McQuarrie defines industrial relations as "the relationship between a union (an organization run by and for workers) and the employer (the organization or organizations the workers in the union work for)."

Other scholars, such as Suffield and Gannon (2015), use industrial relations' broader definition, which includes all aspects of the employment relationship in union and non-union workplaces. In this case, labour relations is a component of industrial relations.

For the purpose of this textbook, the term labour relations will refer to the relationship between employees and employers in a unionized workplace, similar to Hebden et al. (2020). Meanwhile, industrial relations will align with Suffield and Gannon's (2015) definition, which includes both union and non-union employment relationships.

Employee Relations & Human Resource Management

Two more terms are essential when studying labour relations: employee relations and human resource management.

Employee relations often refers to the relationship between an employee and their employer in a non-union workplace. As discussed later in this book, employees in a non-unionized workplace negotiate and manage their employment concerns and issues directly with their employer.

According to Hebden et al. (2020), employee relations is "the study of the employment relationship between employers and individual employees, usually in non-union settings." Employee relations in a non-unionized workplace include any activities undertaken by the HR department to manage the employee-employer relationship.

Since this textbook focuses on labour relations, it will not refer to employee relations directly.

Human resource management is "the broader study of the management of people in organizations to drive successful organizational performance and the achievement of the organization's strategic goals." (Dessler et al., 2013). The study of human resource management includes labour relations and employee relations.

Labour Relations Terminology

Like other fields of study, labour relations has its own language and terminology. The following list, adapted from Dessler et al. (2013), includes some basic terms that are helpful to know.

- **Union** — An officially recognized body representing a group of employees who have joined together to present a collective voice in dealing with their employer.
- **Union Steward / Shop Steward** — A union member elected by workers in a particular department or area of a firm to act as their union representative.
- **Collective Bargaining Agreement (CBA)** — A written contract between the employer and a union that outlines many of the terms and conditions of employment for employees in a bargaining unit.
- **Collective Bargaining** — Negotiations between a union and an employer to arrive at a mutually agreeable set of terms and conditions.
- **Grievance** — A written allegation of a contract violation, filed by an individual union member, the union, or management.
- **Strike** — Temporary refusal by union members to continue working for an employer.
- **Lockout** — Temporary refusal of a company to continue to provide work for union employees involved in a labour dispute.
- **Labour Relations Board (LRB)** — An independent body responsible for the administration of labour relations legislation (law) affecting employers, employees, and unions in each jurisdiction (province or territory).
- **Arbitrator** — An individual who hears disputes between unions and employers and renders final binding decisions.
- **Bargaining Unit** — The group of employees in a firm, plant, or industry that has been certified by the labour relations board as appropriate for collective bargaining purposes.

Reasons to Study Labour Relations in Canada

Why is it necessary to study labour relations? Many students in business or management education programs ask this exact question and how labour relations is relevant to their field of study. These students may argue that modern workplaces no longer need unions or believe they will likely never encounter a union if they do not work in a public sector.

Despite these arguments, there are several reasons why aspiring human resource professionals and business leaders will benefit from studying labour relations in Canada.

1. Unionization Rates in Canada Remain Steady

Canadian workers benefit from a wide range of laws and regulations related to employment, health, and safety. Nevertheless, Canada's unionization rate is around 30% (Statistics Canada, 2024b). Although unionization rates fell significantly by 6.1% between 1981 and 1997, the rate of decline has since been less than 3% (Morissette, 2022).

Unionization rates in 2022 followed the pattern of previous years, with Ontario's 24.7% the lowest and Newfoundland and Labrador's 38.7% the highest (Morissette, 2022). In 2023, a few changes, most notably with Alberta and Ontario, shifted places for the lowest unionization rates (Statistics Canada, 2024b). While public sector workplace union rates remain higher than the private sector, the overall percentage of workers represented by a union means a human resource management or business graduate will likely encounter a unionized workplace during their career.

See Figure 1.1 below for unionization rates in all Canadian provinces as of 2023.

The characteristics of workers represented by a union in Canada have also shifted over time. Unions traditionally represented men working in primary industries for private-sector employers. However, as the economy shifted its focus from a resource-based industry towards a more service-based economy and a larger public service, the number of men represented by unions gradually declined. Today, a unionized worker is more likely to be an educated woman working in the service or public sector.

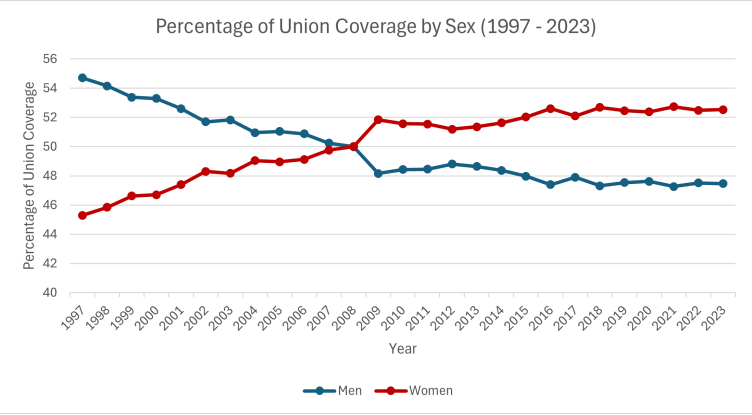

Figure 1.1: *Unionization rates of men and women (1997–2023) (Data from Statistics Canada (2024a) [Long Description]*

While you may not see yourself fitting the mould of a unionized worker, the likelihood of you working in a unionized setting throughout your career is quite likely given the unionization rates. Many sectors have higher than average rates of unionization, such as healthcare and social service, manufacturing, construction, public administration, and education (Statistics Canada, 2024a).

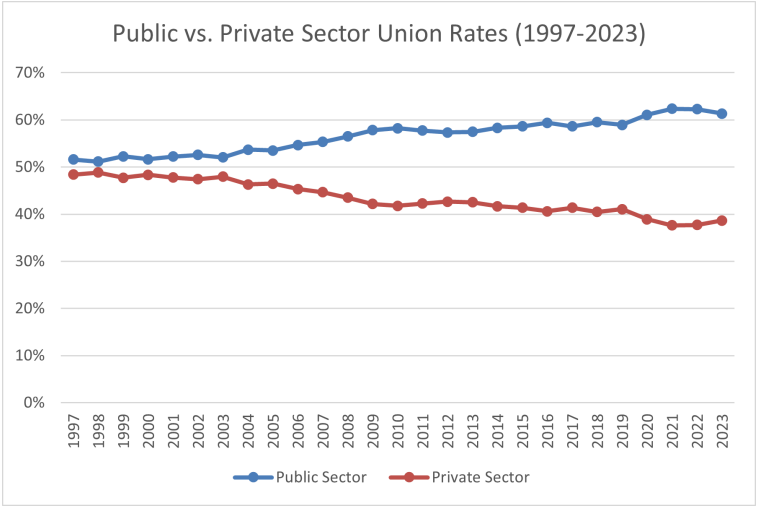

Figure 1.2: *Public vs. private sector union rates in Canada (1997–2023). Data from Statistics Canada (2024a). [Long Description]*

An interactive H5P element has been excluded from this version of the text. You can view it online here:
https://lrincanada.pressbooks.tru.ca/?p=5#h5p-4

Figure 1.3: *Unionization Rates in Canada as of 2023. Data from Statistics Canada (2024b).*

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the figure: ***Figure 1.3:*** *Unionization Rates in Canada as of 2023. Data from Statistics Canada (2024b).*

2. Union Membership as a Prerequisite to Employment

Non-management professional positions in unionized workplaces may require union membership as an employment condition. Such a requirement is especially prominent in public sector workplaces.

Professionals that may be required to join a union include people in accounting, finance, information technology, communication, marketing, and, in some cases, human resources. As such, knowledge of labour relations and unions can help new professionals understand how work environments and relationships differ between union and non-union workplaces.

3. Impact of Unions & Unionized Workplaces on Non-Union Organizations and Employees

In July 2023, the International Longshore and Warehouse Union Canada (ILWU) went on strike against their employer, the BC Maritime Employers Association, for almost two weeks (Bird, 2023). The 7,400 ILWU members working at the Port of Vancouver play a critical role in ensuring the movement of goods across Canada to retailers. Their work directly impacts the supply chain of many exporters, importers, retailers, and manufacturers; as a result, the strike affected the entire Canadian economy.

Experts estimated that the strike cost businesses around $100 million in lost revenue and sales (Bird, 2023). Many affected retailers and manufacturers were non-union workplaces, yet unexpected delays in receiving products and materials directly impacted them.

Furthermore, employees in non-union workplaces may be affected by labour disputes in transit and transportation organizations, schools, and daycares, as these directly impact their ability to attend work. Because of this, managers, leaders, and human resource professionals should be aware of how unionized organizations could directly or indirectly affect their operations.

4. Canadian Labour Laws Make Unionization an Option for Most Workers

As explained later in this book, the Canadian constitution and provincial and federal labour laws make forming a union or joining an existing one an option for most non-management workers. Therefore, understanding employees' rights and means to form a union and employers' rights and limitations to resist such efforts

helps employers and human resource professionals make organizational decisions in non-union workplaces.

Without understanding unfair labour practices, employers undertaking specific actions to resist unionization may find themselves on the wrong side of labour law and face serious consequences. Knowledge of unions may also prompt employers to develop a more proactive labour relations strategy, which the chapter on Management of Labour Relations will discuss in more detail.

5. Knowledge of Labour Relations Improves Employability

Most business school graduates want to secure their first professional role as soon as possible after completing their degree or diploma. With the higher unionization rates in Canada, graduates with knowledge of labour relations and people management increase their chances of securing employment in a professional role.

This knowledge especially benefits HR graduates applying for a role within an HR department with a labour relations function. Not only does knowing labour relations increase employability in HR settings, but it also creates additional career pathways that are interesting and challenging.

Reflective Questions

Consider the five reasons to study labour relations presented above, and answer the following reflective questions:

1. Prior to reading the above reasons, what was your view about the relevance of studying labour relations?
2. After reading them, has your perspective shifted? If so, what new viewpoint are you considering?

Differences Between Union & Non-Union Workplaces

Once a group of employees acquires a union, the relationship between management and employees significantly changes. Table 1.1 summarizes key differences in the contractual relationship between employers and their unionized workers. Below the table is an explanation of each of these differences.

Table 1.1: Differences Between Union & Non-Union Workplaces

Types of Contractual Relationships and Issues	Non-Union Workplace	Unionized Workplace
Legal Agreement	Individual employment contracts	Collective agreement
Who Negotiates Terms and Conditions of Employment	Individual employees with employer	Union representatives with employer
Nature of Terms and Conditions of Employment	Possibly unique to individual employees or employee groups	Generally identical for all employees in an employee classification based on the collective agreement
Process to Resolve Disputes	Court action or individual employee through internal processes or policies	Grievance arbitration process in the collective agreement
Changes to Employment Terms	Consent or constructive dismissal	Constructive dismissal does not apply as changes are negotiated
Employee Termination	Without cause requires statutory notice. With cause, notice is not required.	Without cause, notice is as per the collective agreement. With cause could be grieved and possible reinstatement.

Legal Agreement

When you work in a non-unionized environment, you sign an employment contract or offer letter with your employer before you begin work — or at least you should do this!

In a unionized workplace, you may receive an offer letter, but the main terms and conditions of employment, including wages, benefits, and hours of work, are already agreed to and documented in the collective agreement between the employer and the

employees/union. Typically, your offer letter will outline your start date and hourly rate of pay but will direct you to the collective agreement for all other details.

Who Negotiates Terms and Conditions of Employment?

When you are offered a job in a non-unionized workplace, you will usually be given time to consider the offer. This means you have an opportunity to negotiate some or all your terms of employment with the employer. Perhaps you were hoping for a higher wage or more vacation time. Before you sign your job offer, you can ask for more than that original offer, and if you are lucky and convincing, you might get it. If you have been working there for a while and feel you deserve a raise, you may also negotiate a new salary with your employer directly if they agree that you deserve a raise.

In a unionized workplace, the employer can no longer negotiate directly with employees or groups of employees. When a union is the sole bargaining agent for a group of workers, only representatives of the union (generally workers in the workplace) can negotiate with the employer on behalf of all workers or a group of workers. This most commonly happens during collective bargaining negotiations, but there are instances between rounds of bargaining where the employer and the union wish to change the terms and conditions of employment. In these cases, the union and employer may negotiate changes and sign a letter of understanding (LOU) to amend the existing contract.

There are many possibilities if both parties are willing to make changes, but what is important to understand is that once a union represents a group of workers, those workers and the employer cannot negotiate individual contracts. When you learn more about unfair labour practices, you will also see how employers can find

themselves in trouble with their local labour relations board if they try to make side deals with workers without the union's knowledge or involvement.

For some workers, this non-negotiation aspect is positive. When you are hired in a unionized workplace, you do not have to worry about not getting the best deal you could have — the deal is spelled out in a legal document for all to see. However, for others who feel they could negotiate a better deal on their own, this can deter working in a unionized setting.

Nature of Terms and Conditions of Employment

Another difference closely related to the previous one is the type of terms and conditions you may see in a unionized workplace. Typically, you will find that these are similar across employees and employment classifications and possibly like other workplaces in the same industry. By their very nature and purpose, unions take a collective approach to representing workers and negotiating contracts. They represent not just one worker in a team, department, or organization; they represent many.

As a result, employees represented by a union will have similar or the same benefits, vacation provisions, overtime compensation, and professional development opportunities. Of course, two employees doing different jobs may have a different wage rate or different hours of work. Still, the practice and policy that allows them to advance in the salary scale or change their schedule will typically be the same.

In non-union workplaces, this may not be the case. While many organizations, especially large ones, will have detailed and comprehensive policies on employment matters, the nature of individual contracts might mean that one employee can advance

through the salary scale at a different rate than someone else. With the ability to make changes to employment terms and conditions without negotiation, the employer may also have policies and practices that are very different than those found in unionized workplaces.

For example, if an employer wants to start offering work-from-home opportunities or change your shift time, they only need to comply with employment standards and human rights when making these changes. They do not need to negotiate this with a union. This, of course, could be a good thing if the change they are making positively affects you and your coworkers, but if it negatively affects you, it might not be.

Process to Resolve Disputes

Disputes are inevitable in workplaces regardless of how clear and comprehensive employment policies and collective agreements are. The way disputes are resolved is significantly different in a unionized workplace.

When you do not have a union representing you in a workplace, and you disagree with the interpretation of a policy or practice your employer has created, you need to use internal mechanisms, such as complaint processes, to resolve them. This might involve escalating a complaint to a higher-level manager or the human resource department, but in most workplaces, you will navigate this independently.

Suppose you are terminated or believe your employer has violated the law. In that case, you would need to hire a lawyer or file a complaint with the organization responsible for administering the law. For example, if your employer is not paying you for all your hours worked, you would file a complaint with the employment

standards branch in your jurisdiction. If you are terminated and believe the employer did not have cause or justification to terminate you, you would need to file a lawsuit for wrongful dismissal and take your complaint through the courts.

In a unionized workplace, the grievance arbitration process is written into your collective agreement. This process explains how you can bring a complaint forward and what the steps are to resolving your complaint. Typically, it is a three- or four-step process, with the final step being the decision to involve an impartial third party, called an arbitrator. You will learn a lot about the grievance arbitration process in a future module, but for now, know that this is the legal process to resolve disputes in a unionized workplace. The union supports employees through this process and will pay any legal fees incurred to represent the employee during arbitration.

Changes to Employment Terms

Over time, employers will want to change the terms and conditions of employment. This can be to comply with changes in laws or regulations, adapt to changes in their competitive market or product offering, or due to financial or economic challenges. While this is understandable, these changes may impact employees negatively, which is why employment standards address changes to employment contracts.

In a non-union setting, if an employer wants to fundamentally change your employment contract, they must give a certain amount of notice, usually based on your length of service, and seek your consent. If they do not give this notice and/or you do not agree to the changes to your contract, the employer can find themselves in a constructive dismissal situation. According to an article about constructive dismissal from The HR Reporter, constructive

dismissal is "When an employer makes substantial changes to the terms and conditions of an employee's employment contract, whether explicitly or implicitly, without the employee's consent, the employee may resign from the company and claim constructive dismissal" (Labitoria, 2021). If you do not accept the changes, it is as if the employer has terminated you.

In a unionized setting, the doctrine of constructive dismissal does not apply. When a union is present, your terms and conditions of employment are contained in the collective agreement. As explained above, this contract between the union (on behalf of employees) and the employer is re-negotiated regularly. Thus, if the employer were to independently make changes to the contract, they would violate this legal document, and the union would file a grievance against them. All terms and conditions must be negotiated between the union and the employer, not the employer and individual employees.

Employee Termination

The final significant difference is how employee terminations are treated. Similar to the previous discussion about employment terms, requirements for lawful termination in a non-unionized workplace fall under employment standards legislation. Typically, an employer must give notice if termination is without cause or provide payment in lieu of notice. Severance pay may also be required or provided. For with-cause terminations, there is no requirement for notice. If an employee disagrees with the termination, their recourse or way to address this is to file a wrongful dismissal suit against the employer. This may require them to hire legal counsel.

In a unionized setting, the way without cause terminations are handled is written into the collective agreement. This article of the

agreement will usually explain the circumstances when an employer can terminate without cause (i.e. technological change) and what amount of payment or notice an employee is entitled to. A termination without cause will almost always result in a grievance filed by the union. The grievance process is then used to determine if there was sufficient cause to terminate. It could result in the employee remaining terminated or receiving a lesser penalty for whatever action resulted in their termination. Grievances for termination may also lead to an arbitration proceeding if the employer and union cannot agree on the just-cause nature of the termination.

While there are many other differences between non-unionized and unionized workplaces, this outlines the most significant contractual differences. In the next module, you will learn about the legal framework for labour relations. This will highlight the different laws that are unique to labour relations in Canada and will illuminate other differences you may not have considered at this point.

Conclusion

Labour relations is a broad subject connected with many other topics. It is impossible to study and fully understand the labour relations landscape in Canada without also learning about the legal framework, politics, management strategies, human resource management, and history. These interdisciplinary connections make the topic interesting but also complex and sometimes challenging. Understanding the language and terminology and how labour relations are similar to and different from other employment or work-related topics will help your understanding as your learning progresses.

Media Attributions

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Long Descriptions

Figure 1.1 Long Description: Unionization rates for men start at about 55% in 1997, while women start at about 45%. Unionization rates for men decrease as the years pass, while women's rates increase. Between 2008 and 2009, the two sexes have equal unionization rates. After that, men's rates sharply decrease to 48%,

while women's rates sharply increase to 52%. Both sexes remain at these unionization rates, with only minor fluctuations, until 2023. [Return to Figure 1.1]

Figure 1.2 Long Description: Public sector unionization rates start at about 51% in 1997, while private sector rates start at about 49%. As the years pass, the public sector rates gradually increase to about 61% in 2023, while private sector rates decrease at a similar rate to 39%. [Return to Figure 1.2]

2. The Legal Framework

MELANIE REED

Learning Objectives

- Describe the legal structure for labour relations in Canada.
- Apply specific laws that impact labour relations in Canada.
- Describe the history and significance of the *Charter of Rights and Freedoms* for labour relations.

Introduction

It is impossible to study labour relations without studying the legal framework governing labour relations activities in Canada. Union leaders and pioneers of the Canadian labour movement did not originally intend to solve working-class struggles with lawyers and hearings. Still, as you will learn in this and subsequent chapters, the legal system is a part of the modern-day labour relations system. Therefore, it is important that you can describe and apply the laws

that impact management and union decisions and activities in Canada.

This chapter will provide an overview of the legal framework and relevant legislation. Subsequent chapters will go into further detail about laws that pertain to specific labour relations topics.

Jurisdiction Matters

Legislation that applies to labour relations in Canada exists in all provinces and territories, as well as specific federal legislation. Whether a workplace follows provincial or federal laws impacting workers and employers depends on jurisdiction. Jurisdiction, in this sense, refers to who has legal responsibility for a particular issue or decision.

Until the mid-1920s, labour relations concerns were the sole responsibility of the federal government. Following the 1925 *Snider v. Toronto Electrical Commission* ruling, jurisdiction for labour relations matters was predominantly the responsibility of provincial legislatures. However, federal labour laws still exist and apply to approximately 8% of workers in Canada (Employment and Social Development Canada, 2022a).

You will follow federal labour laws if your workplace is part of the federal public sector or federal private sector. You are part of the federal public sector if you:

- work in federal government administration (e.g. RCMP)
- are a member of the Canadian Armed Forces or a reservist
- work for federal government agencies or federal crown corporations (e.g., Canadian Post Corporation)

Workers belong to the federal private sector if the organization

or business operates across provincial borders and, thus, has an interprovincial component. Examples of industries that are part of the federal private sector include:

- banking
- telecommunications
- transportation
- natural resource distribution (i.e. pipelines)
- Indigenous governments on First Nations reserves.

See Figure 2.1 for a breakdown of federally regulated industries and workplaces.

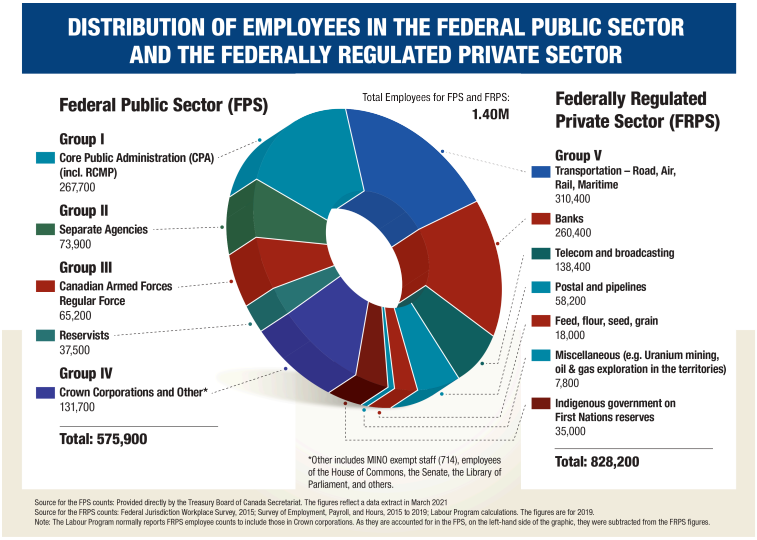

Figure 2.1 *A breakdown of federally regulated industries and workplaces (Employment and Social Development Canada, 2022b) Government of Canada Terms and Conditions [Long Description]*

Apply Your Learning

Consider the information you just learned about legal jurisdiction for employment. Answer the following questions to test your understanding. (Answers can be found at the bottom of this page)

1. You are a teacher at a private Catholic school in Calgary, AB; which jurisdiction applies to you?
2. You are an Air Canada pilot based out of Vancouver, BC; which jurisdiction applies to you?
3. You are the head chef at a restaurant in Inuvik, NWT; which jurisdiction applies to you?
4. You are a research assistant at York University in Toronto, ON; which jurisdiction applies to you?

Charter of Rights and Freedoms

In 1982, Prime Minister Pierre-Elliott Trudeau and Queen Elizabeth II signed the Proclamation of the *Constitution Act*, 1982, which brought to life the Canadian *Charter of Rights and Freedoms*. The Charter is an important historical document, giving Canada independence by embedding the right to change the constitution without Britain's permission. The *Constitution Act of* 1982 replaced

the *Constitution Act of 1867*, also called the *British North America Act* (McIntosh & Azzi, 2012).

Figure 2.2 *Trudeau signing the Proclamation of the Constitution Act, 1982 (Robert Cooper & Library and Archives Canada, 1982) Government of Canada Terms and Conditions*

The Charter is not just an important historical artifact for Canadians. It is often called the 'pre-eminent' or 'supreme' law because it takes precedence over all other laws, regardless of jurisdiction. This means neither the federal nor provincial government can pass a law or regulation denying someone a basic right or freedom contained in the Charter.

However, there are a couple of exceptions to this. The first is spelled out in section 1. It states that "[The Charter] guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (*Canadian Charter of Rights and Freedoms*, 1982,

s 7). This means it may be necessary to certain limit rights and freedoms to protect other rights and freedoms. For example, freedom of expression may be limited to protect people from hate speech. The second is if the federal government invokes the 'notwithstanding' clause, articulated in section 33 of the Charter (Centre for Constitutional Studies, n.d.). This has rarely been used and has a time limit of five years.

The Charter protects several labour relations-related rights under sections 2 (fundamental freedoms) and 15 (equality rights). Specifically, Canadians have the fundamental right to:

- organize and join a union
- collectively bargain with the employer
- strike against the employer
- picket or distribute information
- promote union beliefs and philosophy

Equality rights also protect workers by requiring non-discrimination in union membership, collective bargaining, and representation of members in processes such as grievances and arbitration.

Section 2 Fundamental Freedoms & Section 15 Equality Rights

"2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly, and;
- (d) freedom of association"

"15. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

(*Canadian Charter of Rights and Freedoms*, 1982, s 2, 15)

While today, unions and their members enjoy the protection of the *Charter of Rights and Freedoms*, these rights were not present and obvious when the *Constitution Act of 1982* was signed. Although members of the Canadian labour movement were asked to participate in Special Join Committee meetings to provide input and feedback on the document, they refrained from doing so. While there was decent interest among union leaders and members of provincial and federal labour federations, ultimately, the decision came down to a vote of the Canadian Labour Congress (CLC)

membership, who agreed to stay out of the constitutional debate. (Savage & Smith, 2017).

According to Savage & Smith (2017), this 'constitutional paralysis' boiled down to a few key concerns:

1. **Avoid alienating the Quebec Federation of Labour (QFL)** — The province of Quebec and its premier, Rene Levesque, opposed the Charter and the patriated constitution. The Quebec Federation of Labour (QFL) held membership in the CLC and rallied around their premier and his opposition. The CLC realized that participating in Charter discussions could create a rift between the two organizations.
2. **A lack of agreement among the New Democratic Party (NDP) members on the constitution** — Since this political party had been the main ally of the labour movement, there was a desire to avoid amplifying the internal divide.
3. **A general distrust of what the Charter meant for worker's rights and protections** — There was a possibility that the Charter could strengthen protections previously won and provided in existing legislation. However, there was also a general distrust of the courts and the possibility that the Charter could weaken the collective rights fundamental to the labour movement.

The different perspectives on the Constitution within the labour movement at the time are best summarized with quotes from the individuals who took part in these debates during and after the signing. Some felt strongly that the courts were not the place for labour rights:

> At an April 1985 meeting of the Saskatchewan Government and General Employees Union (SGEU), Larry Brown, the union's chief executive officer, summed up perfectly the union movement's historical antipathy towards the courts when he warned members of his own union that the Charter

> would not be a panacea for public sector workers, pointing out that "working people have made their progress in the streets and on picket lines, in meetings and demonstrations, in struggle and confrontation…not in the halls of justice" (SGEU, 1985,3). Brown's message was clear: labour could not rely on the courts to advance workers' interests (Savage & Smith, 2017).

While others believed a healthy respect for the possibility of accruing more rights was in order:

> Despite Brown's misgivings, about the Charter, National Union of Public and General Employees (NUPGE) president John Fryer encouraged SGEU members to accept the Charter as a political reality that could not be ignored, arguing, "It is the duty of the trade union movement to do all we can to use the Charter and its provisions to protect and expand the existing rights of our membership" (SGEU 1985, 47). Fryer believed that the Canadian labour movement had to develop a strategic plan to deal with the Charter in order to ensure that it did indeed "protect and expand" the right of workers (Savage & Smith, 2017).

What transpired in the years following 1982 was precisely what Larry Brown opposed. The labour movement brought a series of constitutional challenges and court battles to the Supreme Court of Canada to ensure that the rights of unionized workers were, in fact, fundamental freedoms.

Early Charter Challenges

Some of the labour movement's fears about the Charter were rooted in the new constitution's emphasis on individual rights versus collective rights. While others believed that there was hope to

strengthen worker protections through section 2(d) (freedom of association) and section 15 (equality rights) (Savage & Smith, 2017). The only way to tell was for unions or labour organizations to test the Charter was to bring complaints forward through the course.

The 1970s and 1980s were economically tough in Canada. The country was experiencing high inflation, and in an attempt to curtail this, the federal government passed wage control legislation. As a result, public sector unionized workers saw their ability to freely collectively bargain and strike also restricted.

In 1982, multiple unions challenged the Ontario government's inflation legislation, which allowed them to extend the life of collective agreements and ultimately eliminate the right to strike (Savage & Smith, 2017). Although the Supreme Court offered recognition that section 2(d) did protect the right to collectively bargain and strike, they ultimately found that the Ontario government's legislation was 'within reasonable limits' and, thus, still constitutional.

A further case between the Retail, Wholesale, and Department Store Union (RWDSU) and the Saskatchewan government in 1985 saw a 2–1 recognition of the right to strike in the dairy industry. However, despite this Charter win, the provincial government invoked the notwithstanding clause to keep the workers from going on strike (Savage & Smith, 2017).

While some of these first challenges saw at least a partial recognition that collective labour rights were protected in the Charter, the courts and governments continued to find ways to limit unions and unionized workers' ability to take action.

One of the most significant early Charter challenges was the 1986 case of the *Retail, Wholesale, and Department Store Union (RWDSU) vs. Dolphin Delivery*. At the heart of this case was whether the fundamental freedoms in section 2(b) of the Charter applied to common law, the courts, and private actions. The RWDSU was

locked out by their employer, Purolator Courier, and were secondary picketing at Dolphin Delivery, a company that delivered packages for Purolator during the labour dispute. Dolphin Delivery obtained an injunction against RWDSU from the British Columbia courts to stop the secondary picket.

The workplace fell under federal jurisdiction, but the Canada Labour Code (1985) was silent on secondary picketing. As a result, the case fell under common law to decide if the injunction was lawful. Thus, it was up to the Supreme Court to decide if court orders under common law and disputes between private parties fell under the provisions of the Charter.

In the end, the Supreme Court justices did not find that the Charter applied to the courts nor that an injunction was a form of government action because the courts were involved. They further applied section 32 of the Charter narrowly. This section states that the Charter only applies to actions of the Parliament, the Government of Canada, and the provinces, not private actions. As a result, the appeal was dismissed, and the injunction against the secondary picket was upheld.

The Labour Trilogy

In 1987, three additional cases were brought before the Supreme Court of Canada (SCC) to try and establish that the right to collective bargaining and strike was constitutional under section 2(d) (freedom of association). The three cases were:

1. *Reference re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313 (later referred to as the Alberta Reference)
2. *PSAC v. Canada*, [1987] 1 SCR 424
3. *RWDSU v. Saskatchewan*, [1987] 1 SCR 460

In their decision, the SCC Justices took a narrow view of section 2(d). They concluded that Charter rights accrued to individuals and that collective bargaining and striking against an employer were inherently collective rights. Members of the labour movement argued that the very nature of associating was collective, and thus, the two were intertwined. The Alberta Union of Public Employees responded to the decision in *Reference re Public Sector Employee Relations Act (Alta)*, with this statement:

> Combing the definition of "freedom" with that of "association" leads to this: Persons are not to be restrained from engaging in common purposes or actions. At a minimum, anything which may be done by one person may be done by a combination of persons. The purpose of the guarantee of "freedom of association" is to provide a constitutional protection allowing persons to do together what they are permitted to do alone. Any act that may be lawfully done by one person may not be prohibited merely because it is to be done by a group of persons – unless the prohibition of the group activity can be justified by s.1. (Savage & Smith, 2017 p. 86).

While the majority of the justices agreed that limits on collective rights were appropriate and, thus, these cases were unsuccessful in their mission, it was not unanimous. In their dissent to the Alberta Reference, Chief Justice Dickinson and Chief Justice Wilson asserted that the right to collectively bargain and strike was protected by section 2(d):

> In the context of labour relations, the guarantee of freedom of association in s. 2(*d*) of the *Charter* includes not only the freedom to form and join associations but also the freedom to bargain collectively and to strike. The role of association has always been vital as a means of protecting the essential needs and interests of working people. Throughout history, workers have associated to overcome their vulnerability as

> individuals to the strength of their employers, and the capacity to bargain collectively has long been recognized as one of the integral and primary functions of associations of working people. It remains vital to the capacity of individual employees to participate in ensuring equitable and humane working conditions. Under our existing system of industrial relations, the effective constitutional protection of the associational interests of employees in the collective bargaining process also requires concomitant protection of their freedom to withdraw collectively their services, subject to s. 1 of the *Charter*. Indeed, the right of workers to strike is an essential element in the principle of collective bargaining (*Reference Re Public Service Employee Relations Act* (*Alta.*), 1987).

While these constitutional limitations remained for many years, unions and members of the Canadian labour movement, especially those representing public sector unions, were not giving up on the fight to make collective bargaining rights and the right to strike fundamental freedoms for all Canadians.

The New Labour Trilogy

Between 1987 and 2000, little changed on the labour matter at the SCC and in the Justices' minds. They continued to apply a narrow perspective to section 2(d), maintaining that the right to belong to an association did not necessarily mean it had to be an association recognized by the statute. This became clear when members of the RCMP challenged legislation that prohibited them from unionizing, and the SCC disagreed that the legislation violated their freedom to associate (Hurst, 2017).

However, the 2001 *Dunmore v Canada* (AG) case caused the tide to shift when there was a unanimous decision that excluding

agricultural workers from the Ontario labour legislation violated section 2(d) of the Charter (Hurst, 2017). The Ontario government was still able to pass legislation that did not allow agricultural workers to engage in collective bargaining. However, the case was still an important development that was expected to spark additional challenges (McQuarrie, 2014).

One such challenge came from the *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia* case in 2007 when a group of healthcare unions took the British Columbia government to the SCC after the government passed Bill 29. This controversial bill allowed the government to unilaterally change collective agreements by removing language that protected healthcare workers' jobs and prevented subcontracting. In this case, the SCC decided this violated the right to collective bargaining as part of section 2(d) (freedom of association) (McQuarrie, 2014).

In 2015, three additional cases came before the SCC, culminating in the most current and impactful trilogy of Charter cases.

1. *Meredith v. Canada* (Attorney General), [2015] 1 SCR 125
2. *Mounted Police Association of Ontario v. Canada* (Attorney General), [2015] 1 SCR 3
3. *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] 1 SCR 245

In the first case, *Meredith v. Canada* (Attorney General) (2015), the Supreme Court had to consider wage restraint legislation implemented by the RCMP following the 2008 economic crisis. Through the non-unionized Staff Relations Representatives Process (SRRP), RCMP members and the employer agreed upon wage increases between 2008 and 2010. The RCMP implemented the *Expenditure Restraint Act* (ERA) (2009) to address the changing economic times and rolled back the increases (Barrett & Poskanzer, 2015).

On the same day, January 16, 2015, the SCC found that excluding the RCMP members from the *Public Sector Staff Relations Act* (PSSRA) (1985) was unconstitutional under section 2(d). This overturned their earlier decision on the matter. In this case, the justices found that the existing SRRP model did not allow members to have independent management, nor did it allow for meaningful collective bargaining as they could only have input into their contract.

This was a departure from the more narrow definitions applied to previous section 2(d) challenges by labour movement members. It seemed that the SCC now preferred to interpret freedom of association so it included collective rights, specifically collective bargaining.

> The Court held that there are two essential features of a meaningful process for collective bargaining – (1) employee choice and (2) independence from employers of a degree "sufficient to enable [employees] to determine their collective interests and meaningfully pursue them." (Broad & Hines, 2015)

The Saskatchewan decision is the most significant case of this new labour trilogy. In 2008, the Saskatchewan government implemented new legislation called The *Public Service Essential Services Act* (2008). This new legislation allowed the province to prohibit employees working in the public service from striking if they are deemed an essential service. The act also allowed the government to unilaterally designate any public service position as essential.

On behalf of a number of unions and labour organizations, the Saskatchewan Federation of Labour filed a complaint with the SCC, claiming this legislation violated section 2(d) of the Charter (*Saskatchewan Federation of Labour v. Saskatchewan*, 2015). While there was some dissent, most justices agreed that this action impacted the employee's freedom of association due to the close link between meaningful and effective collective bargaining (already

a Charter right) and the right to strike. Writing for the majority, Justice Abella had this to say:

> The right to strike is an essential part of a meaningful collective bargaining process in our system of labour relations. The right to strike is not merely derivative of collective bargaining, it is an indispensable componentof that right. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. This crucial role in collective bargaining is why the right to strike is constitutionally protected by s. 2(*d*) (*Saskatchewan Federation of Labour v. Saskatchewan*, 2015).

As one might imagine, the labour movement celebrated these victories and newly established protections. However, many critics also expressed concerns about the uncertainty these changes might bring due to the justices breaking precedence (Hurst, 2017) and the foray into collective actions instead of individual association. What is certain is that despite not having input in crafting the *Charter of Rights and Freedoms* (1982), the labour movement has been active in shaping the interpretation of this vital piece of legislation.

Fundamental Freedoms & Union Activity

The fundamental freedoms listed below under the *Charter of Rights and Freedoms* currently protect the following union activities.

- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication — right to promote union belief and philosophy.
- (c) freedom of peaceful assembly — right to picket.
- (d) freedom of association — right to belong to a union, collectively bargaining, and strike against the employer.

(*Canadian Charter of Rights and Freedoms*, 1982, s 2)

Labour Legislation

Labour laws apply to both federal and provincial employers and workers. Federally regulated workplaces must follow the Canada Labour Code (1985), and provincially regulated workplaces follow the labour relations code or act in their province. While there are some differences between the provincial laws and the Canada Labour Code, there are also many similarities.

For example, some provinces have provisions for specific industries, such as construction, higher education, and public sector employees. Many include language about essential service designations, and in some provinces, labour laws include occupational health and safety provisions. In other provinces, these provisions are contained in other acts and regulations. For example, British Columbia, has separate laws for public sector labour relations and occupational health and safety. This is why understanding your workplace's legal jurisdiction is so important.

Differences aside, many provisions are found in all of the labour relations laws in Canada. Some common clauses address the following:

- procedures for unions and workers to form a bargaining unit and for the union to become the exclusive bargaining agent for a group of employees in a workplace
- definitions of and processes to address unfair labour practices by the employer or the union
- processes for dispute resolution, referred to as grievance processes
- requirements for minimum durations of collective agreements
- procedures, timelines, and pre-conditions for legal strikes and lockouts
- requirements to establish a labour relations board to provide oversight, administration, and enforcement of the legislation

Labour Relations Boards

Labour relations boards are **quasi-judicial** bodies, meaning they operate similarly to courts but less formally (Fulcrum Law Corporation, n.d.). Boards can make decisions on matters related to labour legislation and apply remedies and penalties as needed. Labour boards can also provide support for conflict resolution

through mediation, arbitration, and conciliation services as required or by request from unions or employers. The federal and provincial governments fund the labour relations boards in each jurisdiction, and board members are appointed by the government. Generally, boards are made up of an equal number of union and employer representatives.

Alberta Labour Relations Board's Responsibilities

"The Alberta Labour Relations Board is the independent and impartial tribunal responsible for the day-to-day application and interpretation of Alberta's labour laws. It processes applications and holds hearings. The Board actively encourages dispute resolution, employs officers for investigations and makes major policy decisions. There are Board offices in both Edmonton and Calgary.

The Labour Relations Code encourages parties to settle their disputes through honest and open communication. The Board offers informal settlement options to the parties, but it also has inquiry and hearing powers to make binding rulings whenever necessary."

(Alberta Labour Relations Board, n.d.)

As you explore various topics and processes in labour relations, the role of labour relations boards will become clearer. For now, it is sufficient to understand that the board must uphold and administer

labour laws in its jurisdiction, and its specific powers are articulated in that code or act. You are encouraged to review the legislation that applies in your province or territory by visiting their website using the links in Table 2.1 below. The exercise that follows this table will help guide your exploration.

Table 2.1 Labour Relations Laws in Each Province

Province	Name of Labour Relations Law
British Columbia	Labour Relations Code (1996)
Alberta	Labour Relations Code (2000)
Saskatchewan	Saskatchewan Employment Act (2013)
Manitoba	Labour Relations Act (1987)
Ontario	Labour Relations Act (1995)
Quebec	Labour Code/Code du Travail (1996)
New Brunswick	Industrial Relations Act (1973)
Nova Scotia	Trade Union Act (1989)
Prince Edward Island	Labour Act (1996)
Newfoundland and Labrador	Labour Relations Act (1990)

Apply Your Learning

Visit the website for your provincial labour law or the Canada Labour Code if your workplace falls under federal jurisdiction. Review the table of contents of the act or code or visit their website home page and see if you can answer the following questions. Answers will vary depending on your jurisdiction, so an answer key is not provided for this exercise.

1. What percentage of employees in a workplace need to show their support for union representation to apply for certification to the labour board? (HINT: looks for a section on 'acquiring bargaining rights')
2. When can a union or employer initiate collective bargaining?
3. When are strikes or lockouts prohibited?
4. Under what circumstances can the employer or union request mediation services from the labour board?

Human Rights Legislation

As you learned from reading about the *Charter of Rights and Freedoms*, equality and equal treatment under the law free of discrimination are fundamental rights in Canada. However, in

addition to these fundamental rights, human rights legislation provides specific protections against discrimination in employment. Both the federal and provincial governments have human rights laws and regulatory bodies to help enforce these laws. This is in keeping with the jurisdictional model described above.

Human rights laws are crucial to employers and workers as they articulate **protected grounds** (sometimes called prohibited grounds or personal characteristics) for discrimination in employment. For example, in all jurisdictions, it is illegal to refuse to employ someone because of their sex or sexual preference.

Employment discrimination can be direct or intentional, like the previous example, but can also be systemic or unintentional. The latter is often harder to identify and can include scenarios where an organization's policies or practices discriminate but are not intended to. The most referenced example of this is the case of Tawny Meiorin.

British Columbia (Public Service Employee Relations Commission) v. BCGSEU (1999)

Tawny Meiorin was a female forest firefighter. She had successfully performed the job for three years, but upon her return for a new season, she was subjected to a new aerobic fitness test. Meiorin was unable to meet the standard and was terminated. Meiorin and her union, the BC General and Service Employees Union filed a human rights complaint saying the standard discriminated against women because it was based on a requirement that did not account for differences in the performance of men and women.

The case went to the Supreme Court of Canada, favouring Meiorin and her union. In particular, the high court found that the test was not reasonably necessary for safe and effective job performance. The result of this led the SCC to devise a three-part test for employers to establish Bona Fide Occupational Requirements (BFOR). This included the following:

1. **Rational connection —** The standard served a purpose rationally connected to the performance of the job.
2. **Good faith —** The standard was adopted in an honest and good faith belief that it was necessary to fulfil legitimate, work-related purposes.

3. **Reasonably necessary —** The standard was reasonably necessary to the accomplishment of that legitimate, work-related purpose (i.e. employers would need to show it would be impossible to accommodate the claimant without imposing undue hardship on the employer).

(Women's Legal Education & Action Fund, n.d.)

Human rights laws are important to be aware of in unionized environments beyond employment decisions. Unions and employers must ensure that their collective bargaining agreements do not violate human rights laws, which may require periodic updates as legislation changes. Unions must also be mindful that they do not intentionally or unintentionally discriminate within their own practices. For example, during their elections for local leadership positions or through any other administrative or organizational processes.

To better understand the various protected grounds and complaint processes, visit the webpage for your jurisdiction's human rights regulatory body using Table 2.2. Then, familiarize yourself with the act by answering the questions that follow.

Table 2.2 Human Rights Legislation in Canada

Jurisdiction	Name of Human Rights Legislation
Federal	Canada Human Rights Act (1985)
British Columbia	British Columbia Human Rights Code (1996)
Alberta	Alberta Human Rights Act (2000)
Saskatchewan	Saskatchewan Human Rights Code (2018)
Manitoba	Manitoba Human Rights Code (1987)
Ontario	Ontario Human Rights Code (1990)
Quebec	Quebec Charter of Human Rights (1975)
New Brunswick	New Brunswick Human Rights Act (2011)
Nova Scotia	Nova Scotia Human Rights Act (1989)
Prince Edward Island	PEI Human Rights Act (1975)
Newfoundland and Labrador	Newfoundland and Labrador Human Rights Act (2010)

Apply Your Learning

Find the human rights legislation that applies to your jurisdiction. Then, find your collective agreement (if you are in a union) or your employer's non-discrimination policy (if they have one). Answer the following questions.

1. How many protected grounds are listed in the human rights law? Do any of these surprise you?
2. Review your collective agreement or non-discrimination policy. Do you see similar language reflected in both documents? Any discrepancies?
3. What is the process for filing complaints under the human rights law in your jurisdiction?

Employment Standards Legislation

Consistent with previous types of legislation, employment standards exist for all jurisdictions. These standards apply to unionized and non-unionized workers in a particular jurisdiction and provide minimum requirements for employers. This might include provisions for minimum wages, work hours, overtime, and employee leaves.

As minimum requirements, employment standards cannot be

ignored or over-written in collective agreements. For example, suppose the minimum wage in your jurisdiction is $18.35 per hour. In that case, a union and employer cannot negotiate a collective agreement that offers an employee $16.50 per hour as the agreement would violate an employment standard. However, collective agreements can (and often do) provide wages and protections exceeding minimum standards.

Employment standard regulations are also codified in acts or codes similar to labour laws. In British Columbia, the Employment Standards Act (1996) is the legislation administered by the Employment Standards Branch, which falls under the responsibility of the Ministry of Labour. Enforcement of employment standards is generally based on complaints, but the director may also initiate investigations. Unionized workers are usually unable to make complaints through employment standards as they have a grievance process available to them through their collective agreement.

Public Sector Labour Relations Legislation

One unique feature of the labour relations legal framework is the relationship between some unions and the government. The labour relations system, which you will learn more about in the theories model, includes many potential actors. However, there are three main actors involved in this system:

- employers
- unions representing employees
- the government

The labour relations board acts on behalf of the government to regulate the activities of these actors to ensure they are compliant with labour legislation (see Figure 2.3).

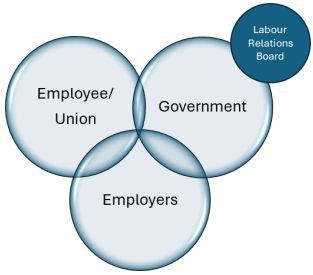

Figure 2.3 *Actors in the labour relations system. Created by the author.*

But what happens when the government is also the employer? As you learned from the section on the *Charter of Rights and Freedoms* and Chapter 1, many unionized workers are employed in the public sector. When this happens, the provincial or federal government becomes an employer. However, government representatives also make the laws, including labour and employment laws. As you can imagine, this creates an even greater power imbalance between the employer and employees. Public sector labour relations legislation is created in most jurisdictions to mitigate this imbalance.

Figure 2.1 near the beginning of the chapter outlines many types of workplaces that belong to the federal public service, but each province also has its own public service. A provincial public sector labour relations act would protect employees who work within provincial government departments, such as the Employment Standards branch and the Provincial Treasury department.

However, several organizations are considered part of the public sector but are not government departments. For example,

universities, courts, school districts, and health authorities receive funding from the government to operate and are accountable to various provincial government departments and processes. These types of organizations are often called para-public sector organizations because employees are not directly hired by the provincial government, but their employment is affected by government oversight.

Provinces may have separate labour legislation specific to these para-public sector organizations to address this unique relationship and help maintain fairness in labour relations matters. For example, the province of Newfoundland and Labrador has public sector labour legislation for people working in the fishing industry, education, and occupational health and safety roles (Newfoundland and Labrador Labour Relations Board, 2023).

The number of acts or codes that govern public sector roles in your jurisdiction may vary. One way to uncover what applies in your jurisdiction is to visit the Ministry of Labour or Employment website for your province or territory. Federal public sector labour legislation can be found on the Justice Laws Website on the Federal Public Sector Labour Relations Act (2003) page.

Conclusion

Labour relations legislation is a complex framework designed to balance the differing interests of employees, unions, and employers. Provincial and federal governments create labour laws to address and regulate labour relations activities, such as union certification, collective bargaining, and dispute resolution, which are enforced and administered by labour relations boards.

However, unionized workers and workplaces must also adhere to other legislation and statutes that apply to their jurisdiction. This

includes the *Charter of Rights and Freedoms*, human rights legislation, employment standards legislation, occupational health and safety regulations, and, in some cases, industry-specific legislation.

This chapter provides a broad overview, but future chapters will include specific legislation that applies to that topic. As you may be starting to see, understanding labour relations requires you to understand the laws surrounding and interacting with it. This understanding is crucial for anyone involved in labour relations, whether you are an HR professional, a union representative, or a member of management.

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Apply Your Learning Answers

1. provincial
2. federal
3. federal
4. provincial

Long Descriptions

Figure 2.1 Long Description:

- Federal public sector (FPS)
    - Group 1 — Core public administration (CPA) (including RCMP) — 267,700
    - Group 2 — Separate agencies — 73,900
    - Group 3
        - Canadian Armed Forces Regular Force — 65,200
        - Reservists — 37,500
    - Group 4 — Crown corporations and other (other includes MINO exempt staff (714), employees of the House of Commons, Senate, the Library of Parliament, and others) — 131,700
    - Total — 575,900
- Federally regulated private sector (FRPS)
    - Group 5
        - Transportation (road, air, rail, and maritime) — 310,400
        - Banks — 260,400
        - Telecom and broadcasting — 138,400
        - Postal and pipelines — 58,200

        - Feed, flour, seed, and grain — 18,000
        - Miscellaneous (e.g., Uranium mining, oil & gas exploration in the territories) — 7,800
        - Indigenous government on First Nations reserves — 35,000
    - Total — 828,200
- Total for FPS and FRPS — 1.40 million

[Return to Figure 2.1]

3. Labour History in Canada: The Early Years

MELANIE REED

Learning Objectives

- Describe the work and living conditions in Canada due to early industrialization.
- Explain the differences and similarities between craft guilds and early unions.
- Explain how industrialization and capitalism gave rise to Canada's working class and a desire for union representation.
- Describe the early experiences of Indigenous Peoples in Canada with wage labour and unions.

Introduction

When we look around workplaces today and consider the laws and

regulations that employers must follow, it is hard to imagine a time when none of those regulations existed. Take a moment and think about how your life would be different today if your employer could force you to work as many hours as they liked, fire you when you became ill, or require you to work in conditions that pose significant risks to your health. It is even more difficult to imagine children as young as nine years old working in dirty factories and mines under these same conditions.

With the onset of industrialization in Canada in the late 1800s, work shifted from a craft model to a more mechanized production model with a capitalist**master-servant employment relationship** . At the time, belonging to a union was also considered illegal, and the employment relationship was a party of two: employers and employees. But despite the disadvantage workers in Canada faced during the years of early industrialization, it was exactly these working conditions that motivated early industrial action and the formation of trade unions.

This chapter explains the conditions under which the working class formed in Canada as well as some key moments in the early days of the labour movement in Canada.

Craft Guilds — The First Unions

Before the industrial revolution, most production of goods was by craftspeople who created an entire product from start to finish. These skilled tradespeople usually owned their own business and created custom goods based on customer needs. In some situations, a craftsperson would commission the work of another craft if they lacked a particular skill or expertise, and they may have hired an apprentice to assist them.

However, all other aspects of making and selling a product were

the responsibility of the craftsperson. This included marketing and delivering the finished product. Although this gave the business owner complete control over the work they did and how they created their product, they also assumed all the costs of production and the risks associated with operating their business. If a craftsperson became ill or injured, there was no one else available to do the work. There was also little time to work on their own skill development. (McQuarrie, p. 31).

The craft guilds, which began in North America in the 17th century, served to address the risks and limitations of the craft model of production. The following functions were typically associated with craft guilds:

1. Insurance Provider

One of the challenges with the craftsperson model was that it only worked if the craftsperson was healthy and well enough to work. One of the functions of the craft guilds was to provide a form of insurance to its members. In the same way that unemployment insurance and disability benefits protect today's workers, this insurance function would provide a benefit to craftspeople who were unable to work due to illness or injury. The member of the guild would pay a fee and in return, they would receive benefits if they were unable to work. In some instances, the guilds might also provide a replacement worker.

2. Supply of Skilled Craftspeople

As guilds became more advanced, they played a role in controlling the supply of skilled labour. If someone wanted to learn a particular craft or trade, they would connect with the guild and could be

placed with a journeyman to learn the trade or skill. This had the effect of ensuring a certain quality of product through the guild.

3. Apprenticeship & Training

Guilds also had exclusive control over the apprenticeship and education system. Individuals who were placed with a journeyman would be provided with training on their methods, processes, and trade secrets. They often lived with the journeyman and signed contracts for multiple years to learn the craft. Once the apprentice was able to prove their mastery of the craft, they would be declared a member in their own right and were permitted to operate their own business under the guild.

Figure 3.1 *Apprenticeship (U.S. Library of Congress/Wikimedia Commons) Public Domain*

Even before industrialization took over, guilds began to recognize the opportunities provided by the division of labour and control of raw materials. The Wool Guilds in Italy were the first example of guilds transitioning from a collective of tradespeople, who produced unique goods and supported each other, to a **master-servant** employment relationship.

With a pool of craftspeople working to produce products and the guild being the only source of raw materials and the distributor of products, they effectively controlled the market. This resulted in lower wages for craftspeople, as they were paid a piecework rate of compensation, and the ability to produce more products faster.

By the 18th century, this model was prevalent in Europe and soon became the norm in North America. Soon, these merchant-capitalists were adopting machines and building factories as the industrial revolution began and forever changed how people work.

Rise of a Working Class

The Canadian working class was emerging well before 1867. By Confederation, one could say for the first time that the growth of the working class was now unstoppable. The creation of the Dominion of Canada took place precisely at that moment when widespread industrialization was visibly underway.

In 1851, fewer than a quarter of Hamilton, Ontario's workers laboured in workshops of 10 or more employees; by 1871, the share was more than 80% (Palmer, 1992). In less than two decades, Hamilton had been transformed from a market town dominated by commerce into a powerful symbol of heavy industry. Though significant and startling at the time, this change was dwarfed by developments in the 1890s.

In that decade, Canadian economic growth simultaneously intensified in the older cities and found new fields in which to flourish in the West. The population of Canada in 1901 was 5,371,315; 10 years later it was 7,206,643 — an increase of 34%. At the same time, however, the labour force grew from 1,899,000 in 1901 to 2,809,000 in 1911, a phenomenal 50% increase (Statistics Canada, 1983). To put this into perspective, there were only 3,463,000 people in the Dominion in 1867 — by 1911, there were close to that many working, wage-earning Canadians. The working class were motivated and shaped by different factors in the various regions of the country, although common themes were quick to arise.

Workplace Conditions

A middle-aged factory worker in 1870 would likely remember very clearly working in settings where having a half-dozen other employees felt crowded. In the 1860s, working spaces were designed for small teams of mostly manual labourers and artisans. That was about to change.

Industrializing employers were finding their way in a new kind of business. Some came into it from their own smaller operations: small producers (some of them artisans) began employing more staff, mechanizing some processes, moving to larger spaces, and becoming manufacturers. This evolutionary model co-existed with instances where factory owners arrived ready-made from other parts of Canada but more often from the United States or the United Kingdom. Increased linkages across industries and systems also meant that **capitalists** and factory owners in one line of business regularly sought to close gaps in supply lines by means of **vertical integration**.

Along with innovations in the means of production and control

over the supply chain, factory owners and capitalists introduced significant changes to work organization. Bringing workers under one larger roof and adding elements, like clocks, bells, and strict rules, created additional layers of control. With these rules also came consequences for not following them, which might include fines or beatings (Heron & Smith, 2020). Yet this early wave of industrialization did not completely eliminate the craft model in all industries. Craftspeople still maintained significant control over their labour in industries such as printing, cigarmaking, and shoemaking (Heron & Smith, 2020). It is in these skilled trades that the union movement in Canada began to take off.

Class Consciousness & Resistance

Studies of the birth of working classes identified two aspects in particular: the shared experiences of belonging to a population dependent on wage-labour in an industrializing economy and the awareness of the same. Loyalties cut across societies and cultures in many directions, muting the possibility of working people seeing themselves as members of a common socioeconomic category or class. One measure of that emerging and evolving class consciousness is the incidence of labour disruption in the 19th century.

The pre-Confederation era saw a rapid rise in labour disputes, accelerating in the 1860s. These principally involved small local associations of skilled craftsmen employed in factories. People of this generation could recall being independent craftsmen and transitioning into wage labour; now, they were facing the mechanization of processes and a consequent devaluation of their hard-earned skills. These workers were generally literate and aware of political and international events. They recognized that their struggles echoed those occurring in Britain and the United States.

Every strike, in this context, was like a flare sent up from a ship in distress. Inevitably, others would respond.

By 1880, it is estimated that there were approximately 165 labour organizations in Canada, some local and many international. Virtually all of these were craft-based. As such, they perpetuated many of the associational rituals and practices from pre-industrial times. Marches, banners, oaths of loyalty, and the building of assembly halls were the most visible of these. Less obvious was the role that early unions played as social safety nets (Palmer, 1992, pp. 94-96).

Almost all had a "benevolent society" component to their work that involved life insurance for members' families. The importance of this role could be seen when industrial accidents — most spectacularly in coal mining disasters — snuffed out lives a hundred at a time. Providing for widows and orphans was thus core to their mandate and an important part of building identification between labour and its community.

Coal mines and other resource-extraction industries in these years were a critical part of the pre-Great War economy. Providing fuel for steam power made coal important, but it was also key to heating food and urban homes, as cities and forest clearing had outstripped the ability of town people to find their own fuel.

Likewise, the food production industries of the late 19th century existed only because urbanites — the fastest growing demographic on the planet — could not address their own food supply. The grain economy boom of the turn of the century was part of this and so, too, was the growth of canneries. These appeared in fruit- and vegetable-growing regions, but they were most impressive in the fisheries. What these resource-extraction industries had in common, then, was a growing market that was certain to continue growing and, between 1867 and 1914, create a need for large numbers of labourers.

Figure 3.2 *Coal miners in Tofield, Alberta (John Woodruff/ Canada. Dept. of Mines and Resources/Library and Archives Canada) Public Domain*

Wages and working conditions in factories, mines, and mills varied sharply according to race. Age was another factor. If the question was: Where do we find largely unskilled labour that will work under supervision in industrial conditions at rates that will profit employers? One answer was to find labour from a displaced or stressed peasant population. Another answer: from among the child population.

Figure 3.3 *Children contributed to the household income in a variety of ways, including coal gathering, which provided fuel to households and could be sold as well. (Unknown Photographer/Library and Archives Canada) Public Domain*

Childhood & Labour

Boys and girls had very different experiences in wage labour. Even in urban environments, girls' labour was conceived of within certain gendered boundaries: domestic work, child-minding, and "fine-work" — textiles and stitchery — were likely destinations. However, girls' work was comparatively undervalued, so the likelihood was always stronger that boys, rather than girls, would be sent out first to find wages for the household (Bradbury, 1990, pp. 71–96). Furthermore, female income levels were generally capped by expectations that they would become either dependents (in a male breadwinner model) or their income was little more than a supplement to the husband's or father's wage.

Boys, on the other hand, were part of a gendered culture of apprenticeships and the expectation that, with age and experience, their income levels would rise. Boys were welcomed into the workplace from the age of eight years until the late 1870s when social pressures and legislation began to push the acceptable starting age upward to approximately 12 years.

Child labour practices, in this respect, varied from province to province for two reasons:

- labour legislation was a provincial responsibility
- different industrial activities predominated across the country with practices being tailored to meet those local conditions

There was no consensus about a vision for childhood: whether children should be sent into often dangerous workplaces or into schools was one of several points of debate. Child labour legislation might protect working children from some hazards, but it also barred them from contributing to the **household wage**. As one study of children in mining observes:

> Efforts to define children's dependence clashed sharply with the working-class family wage economy, whereby boys and girls began to labour for wages at a young age as a key survival strategy. For this reason, working-class parents were among the principal opponents of legislation aimed to restrict children's employment. (McIntosh, 2000, p. 40)

Some employers echoed these working-class qualms, principally because they saw child labour laws as a way of reducing profits by forcing the employers to hire more expensive adults. On the West Coast, restrictions on child labour chased the regulation of Asian labour and vice versa. The goal of a sufficient household wage among Euro-Canadian and Indigenous workers could be undercut by adult Chinese and Japanese labourers, who were willing to work for about the same amount as boys.

The racist context of debate on the issue of child labour was something of a distraction in that the English-speaking world was moving away from the use of children in industry. On the opposite coast, for example, and in the absence of a competing immigrant population, Nova Scotian collieries boys represented a falling share of an expanding workforce from 1866–1911, during which time their presence shrank from as much as 27% of the workforce underground (at Sydney Mines in 1886 and 1891) to as little as 5.5% in 1911 (at Springhill) (McIntosh, 2000, p. 71). The tide was turning against child labour.

The changing attitude around child labour is found throughout the 1889 *Report of the Royal Commission on the Relations of Labor and Capital*. Established in 1887, this was the eighth investigative enquiry into social, economic, and administrative issues. One study describes it this way: "The Royal Commission … is a testament to not only the turbulent economic relations in late-Victorian Canada, but the emergence of the Canadian state's active role in social relations" (Cole, 2007). The Royal Commission's recommendations — apart from the idea of an annual Labour Day — were mostly ignored

by the federal government (which claimed that changes in labour conditions were rightly in the provincial jurisdiction), but its disclosures about child labour were widely covered in newspapers and aroused public concern. In the commissioners' own words:

> In some parts of the Dominion the employment of children of very tender years is still permitted. This injures the health, stunts the growth and prevents the proper education of such children, so that they cannot become healthy men and women or intelligent citizens. It is believed that the regular employment in mills, factories and mines of children less than 14 years of age should be strictly forbidden. Further, [we] think that young persons should not be required to work during the night at any time, nor before seven o'clock in the morning during the months of December, January, February and March. (Kealey, 1973, p. 13)

Under the ominous heading of "Child-Beating," the commissioners made this recommendation:

> The darkest pages in the testimony … are those recording the beating and imprisonment of children employed in factories. Your Commissioners earnestly hope that these barbarous practices may be removed, and such treatment made a penal offence, so that Canadians may no longer rest under the reproach that the lash and the dungeon are accompaniments of manufacturing industry in the Dominion. (Kealey, 1973, pp. 95–97)

Long hours were only one source of complaint among factory workers. Punishments abounded and were often arbitrary. Testimony from a 14 year old journeyman cigar maker in Montreal in 1887–1889 revealed a regime of arbitrary beatings ("a crack across the head with the fist") when a job was done poorly and the possibility of being imprisoned in the factory in a "black hole," a windowless room in the factory cellar, for up to seven hours at a

time (Kealey, 1973, pp. 214–216). Adults might escape beatings but not fines; dismissals were not uncommon.

Moreover, involvement in a labour organization or a strike — particularly in a leadership capacity — could result in a worker's name being added to a blacklist. Canada was large enough a country that a blacklisted worker might outrun this sanction, but sometimes the sanction followed them even into the United States. Civil suits were sometimes launched against labour activists, and many labour leaders spent some time behind bars. In the 20th century, as the size and distribution of industries and corporations increased, managers came to rely heavily on intelligence gathered by industrial spies.

Employers, at times, sympathized with some of the social goals of workers' organizations (or unions) and began experimenting with what has come to be known as **corporate welfarism**. This is an array of services and benefits provided by the employer (but generally outside of a collective agreement). Employers did not, however, sympathize with the unions themselves and were often ruthless in disposing of the organizations and their supporters.

Class & Gender

Women were on the frontlines of industrialization and the creation of the working class. In 1901, 53% of all Canadian females were participating in the labour force, compared to 78.3% of all males (Statistics Canada, 1983). The labour of women was less visible than that of men in these years because of the persistence of cottage labour — or, in urban environments, "outwork." Materials would be taken home by women workers and stitched together or in some other way refined so as to add value. This kind of labour (sometimes referred to as **sweated labour** could easily be as gruelling as any factory work. Women were employed for both types of work in

Toronto in 1868, when the *Globe* newspaper reported that some 4,000 women were either factory workers or engaged in outwork (Palmer, 1992, p. 83).

Overall, the mechanization and systematization of work created more and more opportunities for women to engage in wage labour. The growing obsession of the 19th century state (federal and provincial) with surveying populations and businesses means that we have suggestive (if not comprehensive) information on the range of women's experiences in the workforce.

Women's wages were typically a fraction of men's, regardless of sector. The 1889 *Royal Commission on the Relations of Labor and Capital* reported that women's wages in Ontario were about one-third those earned by men. The assumption that a patriarchal breadwinner brought home the bulk of the household wage was widespread and difficult to dislodge (and, indeed, persists in some quarters today). Women's wages were thus trivialized as top-ups or "pin money."

As men's wages lowered due to mechanization and increased competition for work that required fewer skills, the proportional contribution of women to the household economy became greater and greater. Children, too, were increasingly in demand in the industrial workforce, even sometimes taking jobs that had otherwise been done by adult males.

In cities, like Montreal, living conditions were particularly bleak in the last 40 years of the century. Housing was of a poor quality and cramped; infant mortality rates were high, as were maternal mortality rates. Historian of the working-class, Brian Palmer (1992), describes these domestic situations as potentially dangerous ones for women:

> The underside of the adaptive families of Victorian Canada is a history of husbands deserting wives, of brutality in which women and children suffered the presence and power of

> abusive men, and of males (and, occasionally, females) appropriating the paid and unpaid labour of their spouses and offspring as well as availing themselves of sexual access to those who, emotionally and physically, had few resources to resist. (Palmer, 1992, p. 101)

By the end of the century, something like one-in-every-eight wage earners was a woman. The "needle trades" were dominated by women, and textile towns saw industrialism effectively feminized. The systematization of cigar production allowed large numbers of boys, girls, and women to penetrate what was once an adult male enclave.

Women's involvement in the labour force increased dramatically from 1891–1921. In an era when the population overall and the size of the labour force doubled, the number of gainfully employed women expanded even more rapidly. In the professions (which include teaching and nursing), the numbers leapt from fewer than 20,000 to nearly 93,000; clerical and sales workers exploded from 8,530 to just shy of 128,000. The category "operatives," which mostly covers industrial workers, saw women's involvement rise from 150,649 to 240,572. However, the number of women on farms was flat and, as a share of the population, that number was falling. The number of women listed as labourers fell from 1,049 to 441, but rebounded to 11,716 in 1931 — which suggests that the category's definition was an issue (Statistics Canada, 1983).

Figure 3.4 *Mechanization and systematic organization of the workplace were defining features of deskilling in industrial settings. (Department of National Defence Canada/Library and Archives Canada) Public Domain*

One distinctive aspect of women's work lives was the influence of reproduction on labour. That is, the raising of families. While boys would rise through a process of apprenticeship through journeyman to adult worker and would continue on that rarely-broken path until they retired or died, girls and women entered and withdrew from the workforce more intermittently. Girls' labour in the late 19th century was more heavily regulated (most provincial legislation kept them out of the workforce for two years longer than boys), so they were more likely to get some formal education or take hidden work in domestic settings or outwork. If the household's income improved, girls might be withdrawn from paid work in order to contribute more to the rearing of younger siblings — a strategy that would perhaps free up adult women in the household for wage-earning opportunities.

Bettina Bradbury's (1990) studies of women in industrializing Montreal show wives' participation in the workforce proceeding through life cycle stages. The highest levels of participation are likely to come before the arrival of children, dipping with the arrival of infants, and then dropping severely when the household contains children between one and 10 years of age. Participation rates recover and peak once again when at least one of the children passes the age of 11 years.

Historians have struggled to recover what class awareness and experience meant to women at this time (Palmer, 1992, p. 136). Statements of solidarity and a commitment to political and social reform were often tempered by the social conventions of the Victorian era. While women might have challenged some of those limitations, they perpetuated others. In some women's union locals in Ontario in the 1880s and 1890s, the membership was so reluctant to take on "unfeminine" leadership roles that they requested the appointment of male organizers.

Associations like the Knights of Labor gave a high priority to what were considered at the time to be gender issues. It is safe to assume that these positions reflect the feelings of their female membership, as well as at least a considerable proportion of the male Knights. Historian of labour, Brian Palmer (1992), has commented on this phenomenon:

> [The Knights] deplored the capitalist degradation of honest womanhood that resulted from exploiting women at the workplace; many took great offence at the coarse language, shared water closets (toilets) and intimate physical proximities that came with virtually all factory labour in Victorian Canada. Nor did the Order turn a blind eye to domestic violence and the ways in which men could take advantage of women sexually. Local assembly courts could try and convict members of the Knights of Labor for wife-beating, and the Ontario Order was a strong backer of the

> eventually successful campaign to enact seduction legislation. (Palmer, 1992, pp. 94–96)

What all of these studies reveal is that industrialism brought women and children along with men into the urban cauldron of change in the same era. Moreover, this constituted a perceived change in the long-standing rural and commercial way of doing things. Life courses changed, conditions of work were invented out of nothing, new anxieties replaced old, and there was — in this mesh of experiences — a realization that a new social class was emerging.

Summary of Work Structure Differences Pre- & Post-Industrial Revolution

As discussed above, there are several differences in how people engaged in work before and after the Industrial Revolution. Table 3.1 provides a summary of these differences. Considering the dramatic changes to the work and lifestyle of wage workers may help you better understand the discontent many felt at the time.

Table 3.1: Work Structure Differences Pre- and Post-Industrial Revoluation

Work Structure	Pre-Industrial Revolution	Post-Industrial Revolution
Work Location	Home or workshop in community	Factory in a city or urban centre
Work Division	Craftsperson responsible for entire production process	Employee works on an individual part of the production process
Work Training	Apprenticeship with an established craftsperson	Limited as tasks were specialized and simplified
Ownership of Business	Craftsperson owned their own business	Employer
Market for Goods	Local or regional	National or international
Types of Goods	Custom	Mass produced
Design and Control of Work	Designed by craftsperson or individual workers	Designed by employer or Manager

Note. Adapted from McQuarrie (2015, p. 33)

Indigenous People & Wage Labour

Although Indigenous people's involvement in the Canadian labour market and organized labour in the late 19th and early 20th century is often ignored, they played a significant role in early economic development. Like women and children, Indigenous people had (and still have) a unique context as wage labourers, as their experience is rooted in colonialism and racism (Fernandez & Silver, 2017).

Settler colonialism in British North America was a form of colonialism that was much more than dispossessing land. It was an intentional effort to eliminate Indigenous peoples' societies and

ways of life. Removal from the land, regardless of the methods, destroyed social life, political structures, community connections, and cultural practices (Camfield, 2019). Colonialism also meant the intentional removal of Indigenous peoples through laws that prohibited their cultural practices, forced them to live on reserves, and incarcerated their children in residential schools. The Indian Act of 1876 "disrupted Indigenous systems of governance, restricted access to legal support, and banned the formation of political organizations and cultural practices like potlatches and the Sun Dance" (Brant, 2020).

Traditionally, Indigenous societies survived on subsistence and gift economies (Mills & McCreary, 2021). With the rise of the capitalist economy, some Indigenous people attempted to combine a subsistence way of life with engagement in the labour market. For example, the Squamish people of British Columbia incorporated wage labour as part of their seasonal hunting and fishing migrations when sawmills began opening along their routes (Parnaby, 2006). However, as settler colonialism continued and resource extraction expanded, many found fewer subsistence opportunities. For example, the elimination of bison herds in the prairies in the late 1800s eliminated a way of life for many Indigenous people (Camfield, 2019). This inability to sustain a family and society on their land led many Indigenous peoples to seek wage labour as a means of survival (Camfield, 2019; Mills & McCreary, 2021).

Indigenous men, women, and some children across Canada engaged in wage labour around the turn of the century. They worked in industries requiring physical labour, such as fisheries, sawmills, mining, agriculture, textiles, manufacturing, railway constructions, cooking, and domestic workers (Fernandez & Silver, 2017). In Quebec, the Kahnawake Mohawk men worked for centuries in the fur trade, but in the late 1800s, they became known for their contribution to the ironwork and steelwork trade. They built bridges, helped build the Grand Truck Railway, and eventually played an instrumental role in constructing the New York skyline,

as they developed expertise in high construction work (Fernandez & Silver, 2017; CBC Radio, 2022).

Figure 3.5 *Mohawk Skywalkers constructing Rockefeller Center in 1928. (Lewis Hine/Wikimedia Commons) Public Domain*

While the industries Indigenous people worked in across Canada varied, their position in the worker hierarchy was consistently low. Indigenous workers were paid the least and had the least security in the emerging capitalist system. As they balanced subsistence and cultural practices, they were often replaced by more vulnerable workers, like Chinese labourers and later by white European settlers who were more dependent on wage labour. As the European population in Canada grew, they became more favoured, eventually pushing Indigenous workers out of the paid labour force (Fernandez & Silver, 2017). Work opportunities were heavily racialized and

gendered, with Indigenous women and children at the bottom of the hierarchy (Camfield, 2019; Fernandez & Silver, 2017).

Although rarely acknowledged in labour relations history, Indigenous workers were involved in early union activities. In 1906, Indigenous longshoremen started Local 526 of the Industrial Workers of the World (IWW) union and soon after engaged in labour action. Parnaby (2006) describes the IWW as a likely fit for the Squamish men who formed the local, as it was a union that "offered up a heady mix of revolution and reform to those workers who did not fit well into the established craft union structures" since they continued their seasonal practices. In British Columbia, Indigenous fishermen participated in multiple labour disputes along the Fraser River over the prices paid by the canneries (Ralston, 2006). The Kahnawake Mohawks also struck against their employer in 1907 during the construction of the Quebec Bridge, expressing safety concerns (Fagan, 2022). Tragically, their grievances went unheard, leading to one of the worst industrial accidents of the time, killing 76 people, including 33 Kahnawake men, when the bridge collapsed on August 29, 1907.

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Attribution & Changelog

Changes:

- Created a new title more relevant to this collection
- Added a new introduction and section on Craft Guilds
- Added a paragraph to Working Conditions
- Added a section on Indigenous People and Wage Labour
- Removed some photos and added others more relevant to this collection

- Small sections of content from the section on Child Labour were removed
- Added a table outlining the differences between pre and post-industrial revolution workplaces
- Changed reference notes to in-text citations and full APA references in the Reference list as per APA style guide

4. Labour History: A Growing Movement

MELANIE REED

Learning Objectives

- Recall key events in Canadian labour relations history.
- Describe the evolution of modern-day labour laws in Canada.
- Explain the impact of critical historical events on modern-day labour relations.

Introduction

By the late 1800s, it was evident that Canada was in the throws of an industrial revolution. With economic activity expansion came highs and lows in production and employment. This volatility gave the blooming labour movement a new sense of vigour that manifested through increased organizing and labour action against employers. Craft unions increased their efforts in their existing locations and began expanding into new cities, where industrialization efforts

also expanded. Workers who were ignored by the craft unions did not sit on the sidelines but rather demonstrated their discontent with capitalist employers through strikes and militancy regardless of representation by a union. There was also a growing effort to organize labour movement members by developing labour councils and a national labour congress. This chapter will highlight some key moments that punctuated the next century of Canadian labour.

The Nine-Hour Movement & Trade Union Act, 1872

The late 1800s marked a period of burgeoning resistance against the difficult conditions faced by wage labourers in Canada. Among the significant events that catalyzed change was the Nine-Hour Movement of 1872, a pivotal worker-led campaign inspired by similar efforts in Britain. This movement aimed to convince employers to limit the workday to nine hours, significantly improving the quality of life for workers.

Beginning in January 1872, the movement gained momentum through a series of organized meetings and strikes across Montreal, Hamilton, and various Ontario cities. It drew support from diverse groups, including blacksmiths, carpenters, typographical workers, and unionized and non-unionized labourers. The collective effort highlighted the widespread desire for reform across different trades and industries.

Employers' reactions to the Nine-Hour Movement varied widely. Some were sympathetic and conceded to the workers' demands, offering shorter workdays. However, most employers collectively resisted, fearing such changes would harm their businesses. Despite the pushback, the movement's persistence signalled a growing discontent that could not be easily ignored.

While the movement did not immediately achieve its goal of a nine-hour workday, it was far from a failure. The turning point came in April 1872 when Toronto printers went on strike (Palmer, 2006). In response, Prime Minister Sir John A. Macdonald introduced the Trade Union Act, marking Canada's first official piece of labour legislation. This act legalized union membership, which had previously been considered a conspiracy or crime, laying the groundwork for future protections of workers' rights. Although subsequent legislation made picketing illegal, and there were limits on the act's protection for unions, the foundation had been set for more comprehensive labour laws (Heron & Smith, 2020).

Figure 4.1 *Procession of Nine-Hour Movement Men (Library and Archives Canada, 1872) Government of Canada Terms and Conditions*

The Nine-Hour Movement is often regarded as a catalyst for further labour activism and growing public and political awareness of

workers' rights. It also fostered unity among various unions, paving the way for establishing Canada's first labour federation, the Canadian Labour Union, in 1873 (Heron & Smith, 2020; Palmer, 2006). This organization aimed to represent workers' interests politically, even though it was not initially focused on organizing unions or negotiating with employers. Despite its limited geographical representation—primarily delegates from Ontario until 1878—the Canadian Labour Union's formation underscored the importance of collective action in advocating for labour reforms. (Heron & Smith, 2020).

Trades and Labour Congress (TLC)

The Trades and Labour Congress (TLC) of Canada, which held its inaugural meeting in 1886, was a significant organization in the history of the Canadian labour movement. The TLC emerged as a coalition of Canadian affiliate unions of the American Federation of Labor (AFL) and members of influential labour groups like the Knights of Labor (Hebdon et al., 2020). This confluence of skilled and unskilled labour aimed to unify the diverse voices of Canadian workers and advocate for their rights collectively.

At its core, the TLC sought to address the socio-economic challenges workers faced and improve their living and working conditions. The Congress's primary objective was articulated as follows: "*to rally all the workers' organizations to work to fashion new laws or amend existing laws, in the interests of those who must earn their living, while ensuring the well-being of the working classes (Kealey & Gagnon, 2006).*" One of the TLC's foremost strategies was to lobby the government for legislative changes that would benefit workers. Through persistent advocacy, they aimed to secure better wages, safer working conditions, and reduced working hours.

However, the path to a unified labour movement was fraught with challenges. By the early 1900s, ideological differences and strategic disagreements began to surface within the TLC. After the 1902 congress, these tensions culminated in the expulsion of 23 unions, including the Knights of Labor. This schism led to the formation of the National Trades and Labor Congress (NTLC), which eventually became the Canadian Congress of Labour (CCL) in 1927 (Hebdon et al., 2020).

For the majority of its existence, the TLC aligned practices with that of the AFL, which believed in exclusive jurisdiction (unions that represented a single trade), business or simple unionism (focused on improving conditions for their members) and political nonpartisanship (Hebdon et al., 2020). Over time, however, it prevented the TLC from representing issues unique to Canadian workers and unions. After 70 years of operation, the TLC merged with the CCL in 1956 and became the national federation for organized labour, the Canadian Labour Congress (CLC) (Heron & Smith, 2020).

Figure 4.2 *35th Annual Trades & Labor Congress of Canada, Hamilton, 1919 (McDonald 1919) Public Domain*

Industrial Disputes Investigation Act, 1907

The early 1800s and 1900s saw bursts of strike action in Canada due to increased immigration, industrial economic growth in resource-based sectors, and the development of two national railways (Cruikshank & Kealey, 1987). These disruptions led the Canadian

government to pass legislation in 1900 called the Canadian Conciliation Act, which led to the creation of the federal Department of Labour. This act aimed to reduce the number of labour disputes and provide avenues for conciliators to encourage more amicable collective bargaining. The legislation also offered the opportunity for arbitration should conciliation not be successful, yet the services offered to employers and workers were purely voluntary. In 1903, after a series of railway strikes, the Railway Labour Disputes Act of 1903 was passed, resulting in the option for conciliation and arbitration by the request of either party to a railway labour dispute. This more specific piece of legislation was developed due to the importance of the railway to economic development and transportation (Williams, 1964).

While both The Canadian Conciliation Act and the Railway Labour Disputes Act were options for intervention in labour disputes, they formed a foundation for future legislation that compelled the parties to resolve their differences with government assistance. In March 1907, the Deputy Minister of Labour, William Lyon McKenzie, passed the Industrial Disputes Investigation Act (Marks, 1912). This new law was motivated by a series of strikes in the public utility and mining industries, which were critically important to Canada's growing population and industrial complex. Unlike predecessors, this new legislation compelled employers and employees in the "transportation, resource and utility industries" to engage in conciliation before a strike or lockout occurred and serve a cooling-off period (Heron & Smith, 2020).

Although the impetus of this new legislation was to curtail strike activity in Canada's flourishing industries and newly developing transportation network, industrial disputes increased after 1907. This was not the result of the legislation but rather of increases in union development, class differences, shifts in working conditions, industrial growth, wartime booms, and post-war depressions (Cruikshank & Kealey, 1987). The following table, adapted from Cruikshank & Kealey's 1987 data collection efforts, illustrates the

absolute number of strikes between 1890 and 1950, demonstrating increased activity after 1907.

Table 4.1 Canadian Strike Estimates by Decade, 1891-1950

	Number of Strikes	Number of Workers (000's)	Duration in Person Days (000's)
1891-1900	511	78	1742
1901-1910	1548	230	5492
1911-1920	2349	521	10821
1921-1930	989	261	6626
1931-1940	1760	376	3444
1941-1950	2537	1133	14142
Totals	**9694**	**2599**	**42267**

Table 4.1 Adapted from Cruikshank, D., & Kealey, G. (1987). Strikes in Canada, 1891-1950: I Analysis. Labour/Le Travailleur, 20, 85–122.

Winnipeg General Strike

On May 15, 1919, approximately 30,000 unionized and non-unionized workers in Winnipeg, Manitoba, walked off the job in the largest general strike in Canada (Reilly, 2006). The Winnipeg Trades and Labour Council's (WTLC) Strike Committee organized the strike. Through their efforts and the collective will of workers in public utilities, factories, retail stores, postal workers, emergency services and telephone and telegraph operators (Reilly, 2006), the City of Winnipeg was brought to a halt within hours.

The lead-up to the Winnipeg General Strike of 1919 was a tumultuous period marked by profound economic, social, and political changes. World War I, which lasted from 1914 to 1918, drew many Canadians from various industries into military service, resulting in significant labour shortages. This scarcity of workers led to increased unionization, negotiations and improvements in wages, alongside the employment of women in roles traditionally held by men. However, the war also brought about deskilling in many trades and a tightening grip of management control over workers, increasing their discontent. Concurrently, inflation soared, eroding any wage gains and leaving many workers struggling to make ends meet.

The war years saw heightened government control and efforts by employers to suppress strikes, aiming to maintain production and order. The 1917 Bolshevik Revolution in Russia further fueled militant ideologies among Canadian workers, inspired by the prospect of radical change (The Editors of Encyclopedia Britannica, 2024). As the war concluded in 1918, returning soldiers faced a bleak landscape of high unemployment, rampant inflation, and deplorable working and living conditions. There was a growing awareness of stark class disparities, and industrialists, deeply anti-union, feared a revolutionary wave similar to Russia's. This fear was only heightened by the number of Eastern European immigrants Canada had attracted in the preceding decades. This volatile mix of economic hardship, social unrest, and political radicalism created a perfect scenario for one of Canada's most significant labour actions, the Winnipeg General Strike.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://lrincanada.pressbooks.tru.ca/?p=80#oembed-1

Source: William McKeown. (2017, September 14). *Winnipeg General Strike* [Video]. YouTube. https://youtu.be/pVKo6xEgjaI?si=S0BmauHsqnerkWYS

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the video: Winnipeg General Strike

As the video illustrates, the strike began as an act of solidarity with the Building and Metal Trades workers who were denied the

right to collectively bargain (Heron & Smith, 2020). The telephone operators, the "Hello Girls," were the first to take action. Within 24 hours, overwhelming support for the strike from workers across various industries and unions was activated. However, these acts of solidarity in the streets of Winnipeg were met with powerful opposition from business owners and politicians through the Citizens Committee of 1000 (Reilly, 2006).

However, opposition to the strike did not stop there. All three levels of government, municipal, provincial and federal, also worked together and used their legislative power to ultimately cripple the strike. With the city police on the strikers' side, the Northwest Mounted Police and special constables were brought in to patrol the parades and protests. On June 9th, the City of Winnipeg fired all the Winnipeg city police (Ross & Savage, 2023). By June 16th, the federal government amended the Immigration Act to allow the deportation of many strike leaders. It then altered the Criminal Code to expand the definition of conspiracy, allowing the arrests of the strike leaders based on suspicion, not evidence. (McQuarrie, 2014). Finally, on June 17th, these arrests happened when ten strike leaders were sent to jail.

A silent parade opposing the arrests was held on June 21st. Once again, the government acted swiftly when protesters started to vandalize a streetcar. The Northwest Mounted Police charged the streets and fired into the crowd, killing two strikers and wounding many others. The day became known as Bloody Saturday. Fearing further violence, the strike was called off a few days later, ending with over 3000 workers without a job (Ross & Savage, 2023).

Although it did not achieve immediate gains for workers, the Winnipeg General Strike played a crucial role in shaping the future of the labour movement in Canada. The strike united workers from various industries and backgrounds, demonstrating the power of collective action and setting the stage for a more organized and resilient labour force across the country. Despite the swift and

harsh response from government and business leaders, the strike brought to light the deep social and economic inequalities faced by workers – something many workers still face today. It also highlighted the determination of the working class to fight for their rights, even in the face of significant opposition.

In the years following the strike, several of its leaders transitioned into political roles, using their experiences to advocate for workers' rights on a national stage. Notably, J.S. Woodsworth, who was arrested during the strike, became a founding member of the Co-operative Commonwealth Federation (CCF), which evolved into the New Democratic Party (NDP) (Morley, 2006). This political shift marked a significant change in Canadian politics, as the CCF and later the NDP championed the causes of labour and social justice, continuing the legacy of the Winnipeg General Strike. In this way, the strike's impact extended far beyond its immediate aftermath, influencing Canada's labour relations and political movements for generations. More than a century later, despite it not being immediately successful, the Winnipeg General Strike is still considered one of the most significant events in Canadian working-class history.

One Big Union

The Winnipeg General Strike is the most visible demonstration of the discontent felt by workers post World War I. However, it was not the only action being taken. While there was a lack of agreement on how to improve conditions and standards of living amongst the working class and unionists, there was agreement that the current state of capitalism and attempts to suppress discontent through violence and criminalization would not be amendable. Just before the Winnipeg General Strike, a parallel movement with **socialist** roots was established further west. In Calgary, Alberta, in March

1919 some 250 delegates of the TLC from the western provinces agreed to form One Big Union (OBU) and detached themselves from the most eastern-focused and conservative TLC and the American Federation of Labour (AFL) (Ross & Savage, 2023; Heron & Smith, 2020).

By comparison, OBU was more inclusive and radical than the TLC, advocating a more revolutionary approach to labour organizing and economic reform. The following excerpt from the OBU's original constitution and bylaws summarizes their more socialist perspective on what was required to adjust the playing field between capital and labour.

Excerpt from the Constitution and Laws of One Big Union

"As with buyers and sellers of any commodity, there exists a struggle on the one hand of the buyer to buy as cheaply as possible, and, on the other, of the seller to sell for as much as possible, so with the buyers and sellers of labor power. In the struggle over the purchase and sale of labor power the buyers are always masters — the sellers always workers. From this fact arises the inevitable class struggle.

As industry develops and ownership becomes concentrated more and more into fewer hands ; as the control of the economic forces of society become more and more the sole property of imperialistic finance, it becomes apparent that the workers, in order to sell their labor power with any degree of success, must extend their forms of organization in accordance with changing industrial methods. Compelled to organize for self-defence, they are further compelled to educate themselves in preparation for the social change which economic developments will produce, whether they seek it or not.

The One Big Union, therefore, seeks to organize the wage worker, not according to craft, but according to industry; according to class and class needs, and calls upon all workers to organize irrespective of nationality, sex, or craft into a workers' organization, so that they may be enabled to more successfully carry on the every-day fight over wages,

> hours of work, etc., and prepare themselves for the day when production for profit shall be replaced by production for use."
>
> ("One Big Union," 2021)

Many of the leaders of the Winnipeg General Strike were also members of OBU and thus the two often go hand in hand. At its peak, OBU had up to 50,000 members (Hebdon & Brown, 2020), but less than a decade later, it had all but fizzled out. Regardless, these socialist ideals and the drive for change sparked by OBU led to more labour leaders winning political positions. Although not for benevolent purposes, employers and the government began offering limited benefits to workers, such as pensions (Heron & Smith, 2020).

The Wagner Act

In 1935, Senator Robert Wagner proposed new legislation in the United States to address some of the conflict experienced between workers and employers on the heels of the extreme economic challenges brought about by the Great Depression. President Franklin Roosevelt wanted to stimulate economic growth and saw reduced strikes and more favourable terms for workers as a possible solution (McQuarrie, 2014). The National Labour Relations Act, which was the official name of the legislation, moved away from previous legislation that did not compel employers to collectively bargain or recognize unions. Under the new act, the following legal protections were established:

- Workers had the right to form and join unions.

- Employers were required to bargain with certified unions selected by the majority of employees in a workplace.
- Unfair labour practices by employers were clearly defined.
- A National Labor Relations Board was established.
- The National Labour Board had the power to order remedies when employers violated labour law.
- Exclusivity to the union with the most votes to represent employees.
- Collective bargaining between employers and unions was encouraged.

While the Wagner Act was American legislation, the influence of U.S.-based unions and legal changes significantly impacted the labour movement in Canada. Some provinces, like Nova Scotia in 1937 (Hebdon, et al., 2020), quickly passed similar legislation that required employers to collectively bargain with certified unions. However, it was not until 1944 that a uniquely Canadian package offering Canadian workers and unions similar protections would be passed.

Order-In-Council PC 1003

The passing of Order-In-Council PC 1003 in Canada marked a pivotal moment in the development of modern labour legislation. Modelled after the Wagner Act in the United States, this piece of legislation laid the groundwork for the labour rights that workers in Canada benefit from today (McQuarrie, 2015). PC 1003 was introduced during World War II by Prime Minister Mackenzie King's government as a response to the growing number of militant recognition strikes and the inadequacy of the existing Industrial Disputes Investigation Act to effectively manage labour unrest (Heron & Smith, 2020). The legislation was intended to create stability during economic uncertainty, particularly with the looming

fear of a post-war economic downturn like what had been experienced after World War I.

PC 1003 established several key principles that have become the foundation of Canadian labour law. It granted workers the right to join unions and provided a formal certification process for unions, thereby legally recognizing their role in the workplace. The legislation also prohibited unfair labour practices and made collective bargaining compulsory following union certification. It introduced the requirement for compulsory conciliation before a strike or lockout could occur and mandated that no strikes or lockouts could happen during the life of an active collective agreement. Additionally, all collective agreements were required to include a grievance arbitration process, and it established the creation of a National Labour Relations Board to ensure oversight and enforcement of these new rights and procedures.

The legislation was initially intended as a wartime measure, but its principles were so foundational that the Liberal government extended it two years beyond the war's end. However, despite these efforts, intense strikes continued to disrupt many industries. Recognizing the temporary measure's uncertainty and the struggle between labour and capital was far from over; the government established the Industrial Relations and Disputes Investigation Act in 1948, which permanently enshrined the principles of PC 1003 into Canadian law. Although it began as federal legislation, by 1950, all provinces had adopted similar laws, forming the basis of Canada's modern-day labour laws (Heron & Smith, 2020). This legislation stabilized labour relations at a critical time and positioned the government as a key player in the ongoing balance between workers' rights and economic interests.

Windsor Ford Strike and The Rand Formula

Following WWII, concerns about downsizing and an economic downturn shifted the primary concern of industrial unions to union security (Heron & Smith, 2020; McQuarrie, 2014). While PC 1003 recognized certified unions as the bargaining agent for workers during negotiations in 1945, it was still a temporary measure. This issue came to a head in the first significant post-WWII strike at the Windsor, Ontario Ford Motor Plant. The International Union United Automobile, Aircraft and Agricultural Implement Workers of America (U.A.W.- C.I.O.) wanted a **union shop** whereby employees were required to join the union. The union was also looking for a system of automatic dues check-off where the employer would collect union dues from workers and remit them to the union. Under the system at the time, union leaders would have to collect dues from individual workers every month. This was a full-time endeavour with over ten thousand union-represented workers.

The strike lasted 99 days and involved 11,000 workers from the Ford Motor plant and 8,000 workers from other organizations who supported it (Panneton, 2006). The strikers picketed and used roadblocks to prevent anyone from accessing the plant, which caused Ford to move their corporate offices. In early November, a barricade covering 20 blocks around the plant brought parts of Windsor to a standstill, and the power plant that provided heat to the plant was shut down by UAW members. ("Where Did Our Rights Come From? The Rand Formula and the Struggle for Union Security," 2013).

City of Toronto Archives, Fonds 1266, f1266_it99991

Figure 4.3 *Blockade on Sandwich St. E, Windsor, during the Ford strike, 5 November, 1945. (Boyd 1945) Public Domain*

By the middle of December 1945, the UAW-CIO members voted to end the strike. The two parties agreed to binding arbitration to settle the issue of the union shop and automatic dues check-off. Justice Ivan C. Rand decided the case on January 29, 1946.

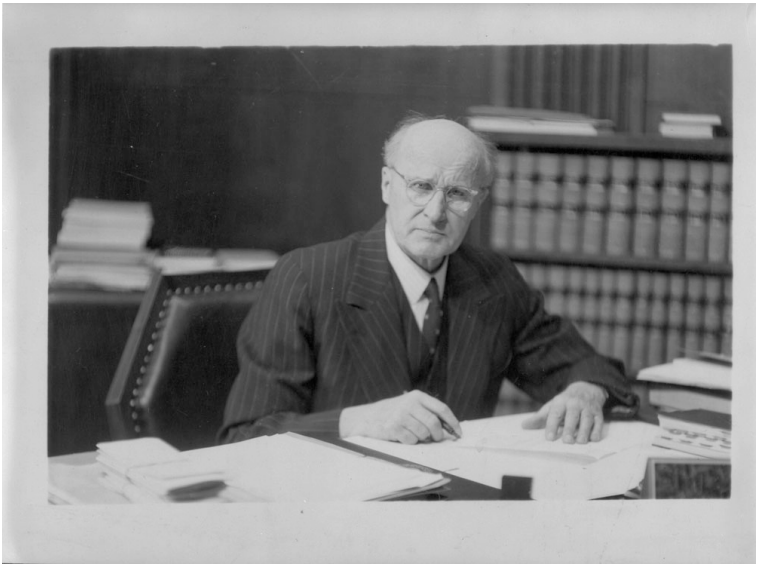

Figure 4.4 *Justice Ivan Rand (Roy & Library of Archives Canada, 1942–1948) Government of Canada Terms and Conditions*

In his decision (Complete Rand Decision, 1946), Justice Rand articulated the two issues as follows:

> "Union security is simply security in the maintenance of the strength and integrity of the union.
>
> What is asked for is a union shop with a check-off. A union shop permits the employer to engage employees at large but requires that within a stated time after engagement they join the union or be dismissed if they do not. This is to be distinguished from what is known as a "closed shop" in which only a member of the union can be originally employed, which in turn means that the union becomes the source from which labour is obtained.
>
> The "check-off" is simply the act by the employer of

deducting from wages the amount of union dues payable by an employee member."

While Justice Rand took no issue with union security and the need to ensure dues were paid and forwarded to the union by the employer, he issued a compromise on the matter of a union shop. He concluded that employees had a choice to join the union at the Windsor Ford plant, but all employees whose role fit within the bargaining unit would pay union dues. His rationale for this compromise was that regardless of membership in the union, all employees would benefit from the union's efforts to negotiate improved wages and benefits. These dues were how the union could negotiate and administer the collective agreement (Dion, 2006). In the final decision, Justice Rand also required the union to avoid engaging in strike action during the life of the collective agreement and only after a secret ballot vote authorized by the Minister of Labour in Ontario (Complete Rand Decision, 1946).

The Rand Formula, as the decision was known, has been criticized in the years since. Opponents primarily object to using union dues to fund political campaigns; however, a Supreme Court of Canada decision in 1991 determined that this did not violate an individual's freedom of association (Dion, 2006). By 1950, most collective agreements had adopted union security clauses based on the Rand decision (McQuarrie, 2014) and today, dues check-off is compulsory at the union's request in most jurisdictions, including in the Canada Labour Code (Suffield & Gannon, 2015). The decision made by Justice Rand not only ended the contentious dispute at the Ford Motor Plant in 1946 but also created a system that allowed unions to ensure resources were available to support their members through collective bargaining, grievance arbitration and strikes or lockouts. Support that union members today still rely on to ensure fair treatment in the capitalist world that continues to thrive.

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5. The Union Question

Why Employees Seek Union Representation

MELANIE REED

Learning Objectives

- Discuss theories on the formation of unions.
- Discuss the reasons workers might seek unionization.
- Differentiate between the different types of unions.
- Describe the structure of unions and the labour movement in Canada.
- Discuss union philosophy and how democracy is embedded in the Canadian labour movement.

Figure 5.1 *Inside a Chapters bookstore (Pingping, 2005) CC BY-SA 2.0*

"Her Toronto Bookstore Unionized in the Middle of a Pandemic. Now, She Hopes Others Will Join Her"

"With COVID-19 worsening work conditions, advocates say there's no better time to unionize.

In the years leading up to the pandemic, Greta Whipple often wondered what would be the last straw that forced her to leave her part-time customer service job at Yorkdale shopping centre's Indigo bookstore.

There were many things that frustrated her, including stagnant wages and the fear management could lay her off at any time. But she thought if she went somewhere else, things wouldn't be any better.

"I can't tell you the number of times … I contemplated a shift, but I really had the feeling that that would just be lateral," said Whipple, 25. "You're dealing with the same stuff under a different brand."

Then came COVID-19. Whipple realized she no longer felt safe at work wearing insufficient PPE and running the risk of dealing with customers who refused to wear masks.

But instead of leaving, she helped spearhead the unionization effort at her store last summer, following in the footsteps of at least five other Indigo stores in Canada where employees unionized."

Read the full story on CBC News

Source: Balintec, V. (2022, January 23). *Her Toronto bookstore unionized in the middle of a pandemic. Now, she hopes others will join her*. CBC News. https://www.cbc.ca/news/canada/toronto/her-toronto-bookstore-unionized-in-the-middle-of-a-pandemic-now-she-hopes-others-will-join-her-1.6316016

Why Join A Union?

As the opening story illustrates, one of the most common reasons workers in Canada seek unionization is to improve their workplace conditions and wages. Recent research certainly supports the notion that employees represented by a union do enjoy better salaries and benefits. A recent study by Poirier and Stevens (2023) illustrates that the increase in wages earned by unionized workers in Canada ranges from 10.23% (average weekly) to 21.88% (median weekly). The report also shows that unionized workers across all industries have greater access to supplemental benefits, such as medical, dental, parental leave, pensions, and sick benefits. For unionized workers, the percentage of workers receiving these benefits ranges from 78% to 90%, and for non-unionized workers, it is 43% to 66% (Poirier & Stevens, 2023).

But is it just about wages and benefits? According to McQuarrie (2015), the factors that might cause someone to seek union representation can be summarized in four categories: personal, workplace, economic, and societal.

Personal Factors

In some circumstances, employees must join the union as a condition of employment. These closed-shop scenarios are common in Canada and do not leave the workers much choice if they prefer to remain non-unionized. In other circumstances, workers seek to form a union in their workplace or seek a unionized work setting outside of the desire for improvements in wages, benefits, and working conditions — what one might consider external factors or motivators.

One reason might be an alignment with a positive political affiliation or ideology toward unions. Perhaps a close family member or parent was a union member and spoke positively about the experience. Or maybe the opposite was true, and the individual formed a negative association with the benefits of being in a union. Either way, the messages we receive from our families and close friends can impact our view on whether unionization is beneficial. However, a positive view of unions usually will not translate into action unless the individual feels the union will better their situation. This utility function or instrumentality is an influential factor. If someone believes they can do better independently and that the union cannot affect the desired change, they are less likely to support a unionization effort (McQuarrie, 2015).

Similarly, coworkers and the industry someone belongs to may also influence an individual's decision to be part of a union. If you and your coworkers are experiencing dissatisfaction in a normally unionized industry, you are more likely to seek union representation and vote favourably when the time comes. Of course, the opposite also impacts the likelihood of a certification vote. If workers feel they do not personally align with union principles of collective voice and negotiation, rewards for seniority, or democratic decision-making, they are less likely to support a unionization effort.

Workplace Factors

A lack of positive association with the workplace or an employee's dissatisfaction with the organization is a primary factor for joining a union (Friedman et al., 2006) and the most commonly cited reason. Workplace factors are also the benefits of unionization that unions and labour organizations most frequently promote.

These factors include:

- monetary elements, such as wages and benefits (absolute and relative to others)
- working conditions
- job security
- occupational health and safety
- employee voice
- fair and equitable treatment

For example, on their website, the Canadian Union of Public Employees (CUPE), Canada's largest private sector union, lists the following top ten benefits of joining a union.

Top 10 Union Advantages from CUPE

1. Higher wages.
2. Greater equality.
3. Pensions/benefits.
4. Job security and tenure.
5. Health and safety.
6. Predictable hours.
7. Training and education.
8. Transparency and equitable due process.
9. Workplace democracy.
10. Advocacy and political action.

For more details on each of these, visit the CUPE website

Source: Canadian Union of Public Employees. (2016, October 3). *Top 10 union advantages*. https://cupe.ca/top-10-union-advantages

Economic Factors

By the end of 2023, many popular media outlets declared the preceding year to be a remarkable one for unions and labour action (Bruce, 2023; Moscrop, 2023; Vescera, 2023; Waddell, 2024). Although union density did not significantly increase across Canada, there was clear evidence of heightened union activity: the number and duration of strikes rose, the length of union contracts extended,

and, most notably for workers, negotiated wages increased (Bruce, 2023). The most frequently cited reason for these changes was economic factors.

Following the COVID-19 pandemic that began in 2020, many workers, like the protagonist in our introductory news story, had a different perspective on work and felt motivated to voice their concerns (Waddell, 2024). Issues such as workplace safety and paid leave for illness gained prominence. However, as businesses reopened and employees returned to the 'office,' two key economic factors emerged that spurred substantial worker action: a tight labour market and high inflation. These conditions created ideal scenarios for union and worker bargaining. Workers' bargaining power naturally increases in a tight labour market where they are in high demand.

Typically, low unemployment rates deter unionization, as workers can more easily find new roles if dissatisfied with their current positions. Yet others suggest that low unemployment increases worker power, and thus, they will seize the opportunity to maximize the gains union representation can offer (Vescera, 2023). Even though unionization rates did not rise across the board, there was a noticeable increase in workers' willingness to negotiate assertively with employers. Inflation, however, presents a different dynamic. In 2023, most Canadians found their money did not stretch as far for necessities, dining, and entertainment (Bruce, 2023; Vescera, 2023). Rising inflation generally pushes more workers toward unionization, seeking collective bargaining power to protect their purchasing power.

Societal Factors

As you have learned by studying some of the history of labour relations in Canada, many unions also improved living and work

conditions for all workers, including those not represented by a union. In some cases, this meant protesting government or employer action, and in others, it meant involvement in politics to bring about change by proposing and implementing new laws.

For example, in August of 1940, after facing pressure and lobbying from unions, the Cooperative Commonwealth Federation (now the NDP), and other social groups, the federal government created a national unemployment insurance program (Canadian Labour Congress, 2018). Although it protected less than half of workers at the time and has been curtailed and revised by many governments since, employment insurance (EI) remains a fundamental protection for all Canadian workers.

Today, labour legislation has a significant impact on levels of unionization. Provincial and federal labour codes dictate the process and level of demonstrated support required to secure union representation in a workplace. In 2022, under the John Horgan NDP government, the province of British Columbia amended its labour code to allow automatic certification if 55% of workers sign union membership cards. This process, known as single-step certification, is also possible in three other provinces and federally regulated workplaces (British Columbia Ministry of Labour, 2022). In BC alone, this one legislative change resulted in more than double the applications for certification in 2023 over 2022 (Vescera, 2023).

In addition to legislation, societal attitudes toward unions can influence workers' willingness to seek representation. When a society consistently elects labour-friendly governments that support legislation strengthening worker and union rights, unions are generally viewed more favourably. For instance, in 2024, the federal Liberal government unanimously passed anti-scab legislation for the federal public service (Wilson, 2024). While the unanimous support for Bill C-58 from all three major political parties could be seen as a political maneuver, it may also indicate

that the voices of Canadian workers are being heard following a year marked by increased labour action (Vescera, 2023).

Apply Your Learning

Re-read the opening vignette about Greta Whipple and her decision to seek unionization at the Toronto bookstore. Using the four factors described above, how would you classify her reasons for seeking unionization? What evidence supports your classification?

Union Formation Theories

Individuals or groups of employees may seek union representation for various reasons. Historically, researchers, such as Sidney and Beatrice Webb and Selig Perlman, attributed union organizing to the separation of labour and capital during the industrial revolution. They believed that the tipping point was the transition from a craft model of employment — where the workers also owned the business — to the industrial model — where workers sold their labour to more powerful capitalists. Other early theorists, like Perlman's professor, John Commons, believed that unions were inspired by the competitive markets created by industrialization.

All three of these early theories contemplated the root causes that sparked the formation of unions in the late 19th and early 20th

centuries. Although these academics and writers have been gone for a long time, the premise of their thinking remains relevant today.

Sidney & Beatrice Webb

Sidney and Beatrice Webb were prominent social economists and writers who contributed significantly to the understanding of labour relations and the experiences of the working class in Victorian England. As founders of the London School of Economics and key figures in the Fabian Society, the Webbs were deeply concerned with social justice and the economic conditions of the poor (Cole, n.d.). Married in 1892, they co-authored many influential publications, including *Industrial Democracy* (1897), a result of six years of meticulous research on the functions and operations of trade unions in the UK (Webb & Webb, 1897).

The Webbs' research led them to the conclusion that the division between labour and capital was a key driver in the formation of unions. They argued that the tendency of profit-focused business owners to exploit workers created a need for unions to serve as a counterbalance (McQuarrie, 2015). The Webbs identified three primary methods through which unions sought to address this imbalance:

1. **Mutual insurance** involved unions collecting dues from their members to provide financial support during times of sickness, injury, or unemployment. These funds were also used to assist workers when factories closed or if they lost tools essential for their work, offering a form of security and stability that was otherwise lacking.
2. **Collective bargaining** referred to unions negotiating with employers on behalf of their members to secure better terms and conditions of employment.
3. **Legal enactment** involved unions lobbying the government to

> establish laws that set basic minimum employment standards for all workers, thereby aiming to ensure fair treatment across the board. (Webb & Webb, 1897)

By documenting these methods, the Webbs highlighted the crucial role of trade unions in advocating for workers' rights and bridging the gap between the interests of labour and capital. While the Webbs identified these methods well over a century ago, they continue to be fundamental functions of trade unions today.

***Figure* 5.2** *Beatrice and Sidney Webb (LSE Library, 2013) Public Domain*

Selig Perlman

Selig Perlman was a labour historian born in Bialystok, Poland, then part of Czarist Russia (Witte, 1960). He immigrated to the United States in 1908 to study under John R. Commons at the University of

Wisconsin-Madison. Perlman became Commons' research assistant and remained at this renowned institution, known for its focus on labour and unionism, until his retirement. His most famous work, *A Theory of the Labor Movement* (1928), offers a distinct perspective on the origins and role of trade unions (Witte, 1960).

Like Sidney and Beatrice Webb, Perlman believed that unions emerged as a response to the capitalist system. However, he developed his theories within the context of the United States, shifting from initially Marxist and Socialist viewpoints to new ideas about labour relations. Perlman argued that for unions to be successful, they needed to respect the basic principles of capitalism and private property rather than seek to overthrow the system (McQuarrie, 2014). He believed that unions and workers should aim to find ways to regulate capitalism effectively, aligning more closely with the American Federation of Labor's view of craft unionism (Craig, 1990).

Perlman introduced the concept of "collective mastery," suggesting that unions should focus on gaining control over job opportunities and collective bargaining rather than attempting to take over the capitalist system (Craig, 1990). He emphasized that unions needed the support of the middle class to thrive but should not be dominated by them. Central to Perlman's theory was the "psychology of the labourer" (McQuarrie, 2015) or what he termed the "manualist mentality" (Craig, 1990). This concept is based on the idea that only workers genuinely understand the scarcity of work and, therefore, seek union representation to help control access to limited job opportunities and ensure job security.

Unlike the Webbs, who saw unions as agents for broader social change, Perlman believed that unions should concentrate on the immediate needs of their members, such as better wages and working conditions, rather than promoting large-scale social transformations. His theories reflect a pragmatic approach to

labour relations, emphasizing the importance of unions working within the capitalist framework to achieve their objectives.

John R. Commons

Like his student Perlman, John R. Commons came to the Wisconsin school in the early 20th century (1904) and became an influential contributor to labour history and economics. Like the Webbs in the UK, Commons studied the changing work conditions in the United States better to understand the formation and development of trade unions. However, unlike his contemporaries, Commons believed that the emergence of the labour movement was rooted in the ever-increasing growth of competitive markets (Craig, 1990). In his popular article titled "The American Shoemakers" and later his volumes of "History of Labour in the United States," Commons points to external factors of expansion and market growth as the source of these budding new organizations (Hunting, 2003).

Commons did not discount the separation of labour and capital and the industrialization of work as factors in the birth of the American labour movement. Still, he did emphasize that growth in competitive markets and the subsequent development of transportation and communication networks significantly impacted the U.S. (Craig, 1990). As capitalists expanded their operations into new markets, they felt a need to be as competitive as possible, which drove less ethical practices regarding workers. Thus, worker organizations formed to combat what Commons referred to as the "competitive menace" (Hunting, 2003). According to McQuarrie (2015), Commons saw a role for unions to "take the wages out of competition" by organizing workers in specific industries and ensuring their employers were competitive because of producing a quality product rather than becoming the lowest cost producer. Of course, expanding business into new markets also meant that unions could

use the same networks for transportation and communication to expand their union organizing efforts (McQuarrie, 2015).

Union Function Theories

Although many scholars and thinkers in the early 20th century contemplated what brought the "union problem" to the forefront of society, others turned their minds toward the myriad ways that unions function and operate. While many agreed that industrialization was a driving force for many unions and labour organizations to form, there was less agreement that unions were homogenous and all operated within a standard structure. Much of the early thinking on unions, such as the viewpoint of Robert F. Hoxie, was that unions were both structurally and functionally diverse (Hoxie, 1914).

Robert F. Hoxie

Robert F. Hoxie believed that unions arose from a group consciousness that manifested in group action to address the group's particular needs (Craig, 1990; Hoxie, 1914). Hoxie's most significant contribution to theories of labour relations in the early 1900s was his perspective on how unions took action, which he articulated into a typology of union functions. He believed that unions did not operate with a single purpose but rather had multiple functional types that might arise depending on circumstances. In his article, "Trade Unionism in the United States," Hoxie (1914) says that:

> ...unionism has not a single genesis, but that it has made its appearance, time after time, independently, wherever in

> the modern industrial era a group of workers, large or small, has developed a strong internal consciousness of common interests. It shows, moreover, that each union and each union group has undergone a constant process of change or development, functionally and structurally, responding apparently to the group psychology and therefore to the changing conditions, needs, and problems, of its membership. In short, it reveals trade unionism as above all else essentially an opportunistic, a pragmatic phenomenon.

Hoxie identified four functional types of unions: business unionism, friendly or uplifting unionism, revolutionary unionism, and predatory unionism (Hoxie, 1914). While these types differ in their purpose and means of achieving this purpose, Hoxie recognized that a single labour union could perform multiple functions and that switching between them depended on circumstance.

1. **Business Unionism** is when a union predominantly functions to improve the working conditions of a specific workplace, trade, or industry. The focus is on a group of workers and negotiating the best possible outcomes through collective bargaining.
2. **Friendly or Uplifting Unionism** is when a union prioritizes social interests and possibly the broader working class rather than the needs of a single group of workers or industry. Friendly unions engage in collective bargaining to achieve their goals but may also participate in political actions and work cooperatively with other organizations with similar aims (Craig, 1990).
3. **Revolutionary Unionism** is a more radical form of unionism. This union function focuses on addressing class differences, often through political action but in some circumstances through sabotage, destruction of property, or acts of violence. According to McQuarrie (2015), Hoxie saw the purpose of revolutionary unionism as changing the class structure in

society and gaining power for the working class. Some might suggest the blockade of vehicles around the Windsor Ford plant in 1945 was an act of revolutionary unionism by the United Auto Workers.

4. **Predatory Unionism** is a form of unionism driven by a union's desire to increase its power, often through illegal or, at the least, unethical means. Hoxie identified two types of predatory unionism that might manifest: hold-up and guerilla unionism (Craig, 1990).

    - In **hold-up unionism**, the union increases its power by striking deals with employers that further their interests but do not benefit the workers they represent. This is often through sweetheart deals where the union accepts employers' bribes to create more employer-friendly contracts.
    - In **guerilla unionism**, the union operates directly against the employer rather than working in concert with them, often employing violence to further their aims (Craig, 1990). Today, we see evidence of a more tempered form of predatory unionism through **union raiding**. Although not illegal, trying to certify workers already represented by a union is seen as unethical by many unions and labour organizations in Canada, including the Canadian Labour Congress (Neumann, 2018).

E. White Baake

E. White Bakke was a professor at Yale University who played a crucial role in developing the fields of industrial relations and human resources in the 1930s and 40s (Encyclopedia.com, n.d.). He believed workers joined unions to improve their situation and reduce their frustrations by improving their standards of successful

living (McQuarrie, 2015). At the core of his research was an element of instrumentality. If workers felt unions could help them live more successfully, they would support joining a union. However, if the opposite is true, they would avoid union representation (Craig, 1990). Bakke identified the following standards of successful living that his research indicated were sought by workers.

1. **Social status** was the first goal that Bakke identified. Workers could obtain social status by being union members due to the democratic structure of unions and the opportunities they may have to secure roles within the bargaining unit or the union organization. This might include serving as a shop steward, serving as a member of the grievance or health and safety committee, or being elected to the role of bargaining until they become chair or obtain a position in the parent office of the union. Once someone is a leader in the union, they may also have opportunities to participate and lead other labour organizations like labour councils or labour federations, such as the Canadian Labour Congress.
2. **Creature comforts** were also identified as goals employees might have when seeking unionization. Once certified as a bargaining unit, the first task will be negotiating a collective agreement. Through collective bargaining, workers can obtain the economic conditions and job security they most often seek when they unionize.
3. **Control** is another function that unions provide workers. As you recall from The Legal Framework, the separation of labour and capital brought on by early industrialization removed much of the control workers had over their working conditions, living conditions, and choice in the type of work they pursued. Other theorists identified the creation of unions as a way to address this lack of control. Bakke believed that being part of a union helped employees gain control over their conditions primarily through collective bargaining. Bakke did note that if the union did not live up to the principles of

democracy, some workers might feel they are trading control by management for control by the union and, thus, may be discouraged from being part of a union (Craig, 1990).

4. **Information sharing** through educational programs, research, and news is another element Bakke identified as improving standards for unionized workers. Most large unions have research departments that provide members with information on the economy and society. For example, Unifor (n.d.c) has a section of its website dedicated to sharing its latest research. Unions also offer educational programs for their members to improve their opportunities to participate in the union locally and beyond. Training programs support union members in becoming part of collective bargaining teams, becoming shop stewards, or learning about union management. CUPE (n.d.b) has a catalogue of programs available to members across Canada.
5. **Integrity** is the final factor Bakke identified. A union's ability to offer integrity to workers is based on their perception. Can the union provide workers with "wholeness, self-respect, justice and fairness" (Craig, 1990)? If they believe that the union can offer this, they are more likely to say yes to joining.

Dunlop, Craig, & Systems Theory

In 1958, John T. Dunlop, a professor at Harvard University, published his pivotal work, *Industrial Relations Systems* (McQuarrie, 2015). In this book, Dunlops used a systems theory approach to create a framework for analyzing industrial relations. Dunlop's model of the industrial relations system explained how unions function through their internal operating system but also within the context of the larger systems external to the union organization or a bargaining unit.

The premise of Dunlop's model was that the three main **actors**

(government, managers/employers, unions/workers) in the system acted based on different **contexts** (McQuarrie, 2015). These external environment contexts influenced the behaviour of the actors and the processes they would engage in.

Dunlop also identified a **web of rules** that governed the actions and interactions of these actors (McQuarrie, 2015). He identified processes for developing the rules to govern the interactions and the rules themselves. These rules might be organizational rules on employee conduct, wages, and performance measures, or they could also be laws that provide workers with fundamental rights and protections. Dunlop also identified procedural rules that outlined how the substantive rules would be applied. For example, the procedure employees must follow to request time off from work.

The following table adapted from McQuarrie (2015) captures the elements of Dunlop's industrial relations system.

Table 5.1: John Dunlop's Industrial Relations System Model

Actors	Contexts	Web of Rules
Unions & Employees	Technologies	Procedures for Establishing Rules
Management & Employer	Markets & Budget	Substantive Rules
Government & Other Relevant Agencies	Power	Procedural Rules

Note. Adapted from McQuarrie (2015).

Canadian professor Alton W.J. Craig updated Dunlop's framework using open-systems theory as a tool to analyze industrial relations (Craig, 1990). At its most basic, an open system receives inputs from the external environment, processes them, and creates a new output. A classic example is building a car. The auto manufacturer receives raw materials, such as component parts, and, using machinery and internal labour (actors), the parts are put together to create a new output that can be sold — a car.

Craig's model added to Dunlop's in a few specific ways. First, Craig clearly defined a set of external inputs or subsystems that impact the industrial relations system. This included the legal, economic, ecological, political, and sociocultural subsystems. Craig recognized the same three actors as Dunlop: government and other agencies, managers and employers, and unions and employees. Hebdon et al. (2020) added end-users as new actors in their rendition of the framework since the employment relationship impacts them.

Another one of Craig's additions was internal inputs. He recognized that the actor's values, goals, and strategies also impacted the system's processes. For example, the union's goals and management's goals might not align. This could produce a conflict during collective bargaining, a possible conversion mechanism (process) that might be used in the system to create an output (a collective agreement). The relative power of each actor would also impact their ability to achieve their goals and was added to the framework as an internal input. The following diagram is Hebdon et al.'s (2016) version to illustrate these components.

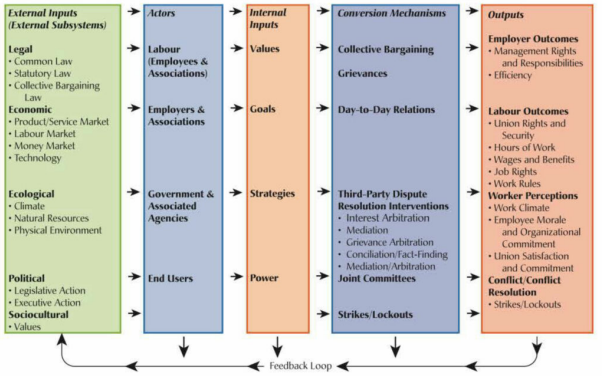

Figure 5.3 *Industrial Relations Systems Model (Hebdon et al., 2016). Image courtesy of Top Hat. [Long Description] Used with permission.*

As the above diagram illustrates, Craig added a feedback loop to

reflect the open-system concept. This contribution represented the true nature of the industrial relations system. An output such as increased wages in a workplace or an industry could ultimately impact the external environment by affecting the economic subsystem. The conclusion of an arbitration would affect the legal subsystem by creating a precedent that future arbitrators might rely on.

While Craig (1990) did not suppose his work to be a theory of industrial relations, he hoped it would lead to the development of one. While further adaptations have not taken the framework to this level, it is a beneficial model for understanding how a workplace changes when unionization occurs. There are new laws and economic concerns; politics might have a more significant effect on the workplace, new actors are included along with their unique internal inputs, and the conversion mechanisms in the new employment relationship will be different.

Structure of the Canadian Labour Movement

Union Affiliations in Canada

The structure of the Canadian labour movement is based on a series of relationships between and amongst unions and other organizations, commonly called affiliates. To be affiliated means to have a relationship with the organization, generally one of membership through payment of dues. For example, a local union in Kamloops, BC, might be a member of a local labour council like the Kamloops District Labour Council (KDLC) (n.d.). The local union would pay annual dues to the labour council, and in return, they

could send members to KDLC events and meetings. Their members could also run for elections to be on the executive team at KDLC, and their particular issues or concerns could be brought forward to local politicians through lobbying and advocacy work of the council. This same opportunity and relationship exists through all the affiliate labour organizations illustrated in Figure 5.4. Look at each layer of this representation and the role of the various organizations in the labour movement in Canada.

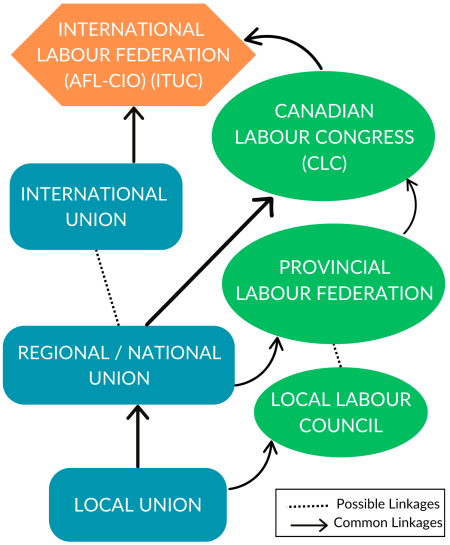

Figure 5.4 *Union Affiliation in Canada. [Created by the author] [Long Description]* CC BY-NC-SA 4.0

Local Union

A local union represents the workers at a particular workplace or

group of workplaces who come together to organize for collective bargaining and workplace representation. Local unions can either form independently or affiliate with an established union called the parent union. Typically, workers join an existing union due to its expertise, resources, and support. However, in certain circumstances, an independent union may be better positioned to represent the unique needs of its members, as is the case with athletic unions like the Canadian Football League Players Association (n.d.).

Local unions vary significantly in size and structure. They might encompass all workers across several workplaces, all workers performing the same type of work, or all workers at a single workplace, regardless of occupation — such as in a municipality or school district, which might have workers in various professions and roles in the same local. The structure depends on factors such as the potential number of union members, the number and proximity of workplaces, and the specific employment sector. There is no "typical" local union size — while some locals may have a large membership, others could consist of just a few employees.

The internal structure of a local union is grounded in democratic principles, ensuring member participation and representation. Local union members elect an executive body responsible for managing the union's activities. The executive typically includes positions such as president, vice president, secretary, and treasurer (McQuarrie, 2015). There may also be roles on additional committees in larger locals, such as equity committees, joint occupational health and safety committees, or grievance committees. This democratic structure also ensures that all members can participate in and attend meetings and vote on union matters. Local decisions are usually made by way of a general membership meeting. If there is a parent union, the operation of the union is spelled out in the union constitution and bylaws (Ross & Savage, 2023) to ensure consistency and proper reporting and record keeping.

One of the critical roles in a local union is the shop stewards, who are union representatives within the workplace. Shop stewards assist members with grievances, advocate for them during disciplinary proceedings, distribute union literature, and welcome new members (McQuarrie, 2015). They are usually elected during annual elections and are crucial in maintaining a connection between the union's leadership and general membership.

One of the most essential roles of shop stewards is to represent workers in investigation and grievance meetings. They are there as a witness to management action and inquiry and to speak on behalf of the employee and/or the union as necessary. In many collective agreements, management is required to invite the shop steward to attend any meeting that could result in any form of disciplinary action.

In larger unions, additional roles, such as business agents, may be necessary to manage day-to-day functions and assist the executive. These agents, who may serve multiple locals, often have significant responsibility and influence, particularly in contract negotiations and grievance handling. While most positions at the local level are unpaid, the business agent is generally a paid employee of the parent union. Individual locals may negotiate paid arrangements with their employer through collective bargaining, including a paid full or part-time position. While this may be more common in larger locals, a more typical arrangement is for individuals involved in union work or serving on the executive to have time away from their role with pay to conduct union business.

The union dues paid by members fund the local and other levels of the union, such as parent unions and affiliate memberships. According to McQuarrie (2015), local unions generally serve three main functions:

1. dealing with workplace problems or grievances
2. engaging in collective bargaining

3. participating in political or social activities.

How these functions are carried out depends on the local's membership, the guidance from business agents, and the level of member participation in votes and discussions.

Parent Union

Parent unions are larger bodies that oversee and support local unions. They may be referred to as regional, national, or international unions. Sometimes, a local union might be affiliated with multiple organizations, such as a regional office, a national parent, or an international union.

For example, the local municipal fire service where you live likely has members of the International Association of Fire Fighters (IAFF) (n.d.). That local would be affiliated with a provincial office, such as the BC Professional Fire Fighters Association (n.d.a), who would support them with a range of activities. That local would also be required to follow the constitution and bylaws of their parent union — the IAFF national office in Canada and their international office in the United States.

Regardless of the union's structure, the parent union generally works closely with their locals and performs a number of supportive functions. Parent unions play a crucial role in creating and developing local unions, often dedicating employees or entire departments to union organizing efforts (Ross & Savage, 2023). They provide vital support to local unions' ongoing activities, such as assisting with workplace issues, grievances, and arbitration processes. When it comes to collective bargaining, parent unions offer expert advice or help local unions hire professional negotiators, ensuring the local union maintains control while receiving the necessary training and guidance to effectively

navigate negotiations. Beyond these functions, parent unions conduct educational programs to enhance members' knowledge and skills, represent their members on broader labour councils, and engage in lobbying activities at the provincial or national level to advocate for workers' rights.

Through these efforts, parent unions help strengthen the overall labour movement by empowering local unions and advocating for their interests on a larger scale. Below is a description of their role from the BC Professional Fire Fighters Association.

BC Professional Fire Fighters' Association — What We Do

The BCPFFA is a service provider for its affiliates offering training and education in areas of provincial legislation, occupational health and safety, WorkSafe advocacy, financial assistance, bargaining, labour law, and advocacy for best practices in both public safety and fire fighter safety.

- Work with the provincial government and WorkSafe BC to recognize and improve fire fighters' health and safety for all of British Columbia's professional fire fighters.
- Assist with contract negotiation, grievance arbitrations and labour management issues.
- Access to key information on wages, benefits and working conditions.
- Provide online resources to address and assist with challenging issues facing affiliates and members.
- Assistance in developing public and member communications.
- Educate decision-makers about public safety and the importance of adequate staffing levels.

- Provide financial assistance for small locals to attend educational training and conferences.
- Provide locals with financial assistance for interest and grievance arbitrations.
- Organize and facilitate health & safety, political, labour management and educational events & programs…

Source: BC Professional Fire Fighters Association. (n.d.b). *What we do*. Retrieved September 12, 2024, from https://www.bcpffa.net/whatwedo

Parent unions adhere to the same democratic principles as local unions. They are governed by an executive committee elected by representatives of local unions or regional offices. The parent union may have executive positions similar to those of the local union; however, they will often have some paid staff, including business agents. Elections and major decision-making in the parent union also happen through democratic processes through their convention or congress (McQuarrie, 2015). The parent unions' constitution and bylaws will usually address how many delegates from each region or local can attend the convention and participate; generally speaking, each local can send one delegate to ensure larger locals do not have more voting power than smaller ones (McQuarrie, 2015). Like local unions, funding for parent unions comes from a portion of the union dues paid by members at the local level.

Table 5.2 Regional, National & International Unions with Large Memberships

Union	Membership in 2024
Canadian Union of Public Employees (CUPE)	750,000
National Union of Public and General Employees	425,000
Unifor	315,000
United Food and Commercial Workers Canada (UFCW)	255,000
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)	255,000
Public Service Alliance of Canada (PSAC)	180,000
La Fédération de la santé et des services sociaux (FSSS)	140,000
Teamsters Canada (TC)	125,000
Service Employee International Union Canada	100,000

Note. Created by the author

Labour Councils & Federations

You will see three green ovals on the right-hand side of Figure 5.4 above. These organizations are not unions but play a significant role in the Canadian labour movement. Labour councils and federations are often referred to as affiliate organizations because other labour organizations and unions will become members or affiliate with them.

These organizations primarily aim to support and advocate for workers and unions in Canada. While most of their affiliates are unions, their priorities and goals are not strictly focused on the interests of unions; rather, they represent the interests of all workers. Within Canada, there are three levels of affiliate labour organizations.

Labour Councils

Labour councils are smaller, more grassroots labour-focused organizations typically comprised of members of local unions. While smaller and more local, they play a significant role in supporting and advocating at the municipal level or within a geographic region with smaller communities. They provide an essential opportunity for local members to participate in advocacy and social, economic, and political change.

These councils are funded primarily through membership dues collected from their affiliated unions. Unlike larger unions or federations, labour councils often operate with limited financial resources due to their local focus and, as a result, typically do not have paid staff; instead, they rely on the efforts of volunteers who their members elect to carry out their activities (McQuarrie, 2015).

Local unions usually elect a representative to serve on the labour council they belong to, but affiliating with a labour council is not mandatory for all local unions. However, unions seeking membership in the Canadian Labour Congress (CLC) must join a local labour council. Some unions, such as those under the Canadian Union of Public Employees (CUPE) (2023), are required by their constitutions to maintain membership in their local labour councils.

Labour councils primarily focus on issues affecting workers within their region. Their activities may include showing solidarity with striking workers, lobbying local governments, and collaborating with other organizations to promote legislation that benefits workers and unions. Common issues of concern for labour councils include protecting healthcare services, advocating for minimum wage increases, and safeguarding funding for education. Additionally, some labour councils provide bursaries to the children of members in affiliated unions, further supporting the community's needs (Kamloops & District Labour Council, 2024).

The following example is taken from the Calgary District Labour Council's homepage, highlighting its focus in the fall of 2024.

Calgary District Labour Council's — Focus

Today, the CDLC is working with our community partners to maintain and strengthen health care, the public education system, and to protect our social programs.

These things effect every person, union or non-union both working and unemployed. Labour activists volunteer their time in many aspects to build stronger and more caring communities. We do this by fighting for equal access to quality social programs, public services, decent jobs and improved standard of living for everyone.

Together, we are working to close the growing gap between the rich and poor in our society.

Source: Calgary & District Labour Council. (n.d.). *Home*. Retrieved September 12, 2024, from https://thecdlc.ca/

Provincial Labour Federations

Provincial labour federations exist in all Canadian provinces. The Yukon Territory has its own federation, and the Northwest Territories and Nunavut have a combined federation called the Northern Territories Federation of Labour (n.d.). Most parent

unions will be affiliated with the provincial labour federation in their province, as will labour councils. Since most work workers (union and non-union) in Canada fall under provincial labour and employment standards legislation, influencing the government at the provincial level is essential. Provincial labour federations will lobby provincial governments for changes that support workers and make it easier to certify unions.

The following example from the Saskatchewan Federation of Labour's "About Us" page on their website outlines the broad role that a provincial labour federation can play.

Saskatchewan Federation of Labour — About Us

The Saskatchewan Federation of Labour represents over 100,000 members, from 37 national and international unions. Our affiliate membership belongs to over 500 locals across Saskatchewan and represents dozens of communities. We strive to improve working people's lives throughout the province, whether organized or unorganized, and regardless of affiliation to the Federation. The SFL serves as Saskatchewan's "voice of working people" in speaking on local, provincial, national, and even international issues. We support the principles of social unionism and struggle for social and economic justice for all.

Saskatchewan's Labour Movement: The folks who brought you the constitutional right to strike!

Just some of the issues on which the Federation continues to provide advocacy include occupational health and safety, pensions, labour standards, the minimum wage, equal pay for women, and childcare. Of course, the SFL also plays a role on the national and international stage, participating in the debate on such issues as human rights, poverty, medicare, the growing gap between the rich and the poor, and homophobia, to name a few.

Source: Saskatchewan Federation of Labour. (n.d.). About

us. Retrieved September 12, 2024, from https://sfl.sk.ca/about

Canadian Labour Congress (CLC)

The Canadian Labour Congress (CLC) stands as Canada's largest central labour federation, representing nearly 3 million workers nationwide (Canadian Labour Congress, n.d.b). Established in 1956 through a merger of the Trades and Labour Congress and the Canadian Congress of Labour, the CLC brought together various segments of the Canadian labour movement under one umbrella to enhance its capacity for collective action (Hebdon et al., 2020). The CLC is affiliated with provincial labour federations and many local labour councils, sharing a role and purpose similar to those bodies but operating nationally.

The CLC's leadership lobbies the federal government on social and economic issues that impact all Canadians, advocating vigorously for workers' rights. Beyond its advocacy work, the CLC offers substantial support and services to its affiliated unions and organizations. It assists with union organizing efforts, provides educational resources, conducts research, and communicates essential information regarding politics and legislation. Additionally, the CLC represents the Canadian labour movement internationally, ensuring that Canadian workers have a voice in global labour discussions.

The organization operates on democratic principles similar to those found within individual unions. Every three years, decisions about the CLC's strategic direction are made at the CLC Convention, where delegates elect executive leadership. In 2023, Bea Bruske,

formerly the vice-president of the United Food and Commercial Workers (UFCW) Canada National Council, one of the largest private sector unions in Canada, was elected for a second term as CLC President (Canadian Labour Congress, n.d.). Bruske is the second woman to hold the top role in the Canadian labour movement.

The CLC is funded through union dues collected from its affiliate unions and organizations, with a constitution that outlines the expectations for these affiliates. One notable feature of the CLC's governance is its Code of Ethical Organizing, which guides how unions are expected to conduct themselves in organizing activities. A key principle of this code is that "affiliates should not organize or attempt to represent employees who are already organized and have an established collective bargaining relationship with another affiliate" (McQuarrie, 2015). This rule is designed to prevent 'raiding,' a practice where one union attempts to recruit members from another. The BC Nurses Union, for instance, was expelled from both the CLC and the BC Federation of Labour for such actions (McQuarrie, 2015). By discouraging raids, the CLC aims to promote the organization of workers who are not yet unionized and to minimize conflicts among its affiliates.

Other Labour Centrals in Canada

While the CLC is the dominate central labour organization in Canada, it is not the only one. The Confederation of Canadian Unions (CCU) (n.d.) has been operational in Canada since 1969. They are the largest national labour federation of independent unions and pride themselves on being "free of the influence of American-based international unions" (Confederation of Canadian Unions, n.d.). In 2024, they stated they had 20,000 affiliated member unions.

The province of Quebec also has three central labour federations in

addition to the provincial Quebec Federation of Labour, which is a provincial affiliate of the CLC (Ross & Savage, 2023):

1. The **Confédération des syndicats nationaux** (CSN) (Confederation of National Trade Unions) is the largest and represents 330,000 members and 1,600 unions as of 2024. (Confédération Des Syndicats Nationaux, n.d.)
2. The **Centrale de l'enseignement du Québec** (Quebec Teachers' Union), which began in 1974, is the next largest and represents 250,000 teachers and education workers in the province of Quebec as of 2024. (Centrale Des Syndicats Du Québec, 2024)
3. The **Centrale des syndicats démocratiques** (CSD), which began in 1972, is the last one. The CSD stresses its mission is to represent unions seeking solidarity and autonomy. On their website, they state that their founding purpose was to represent "…workers who wanted a union movement that belonged to them and that was free from all political and financial ties." (Centrale Des Syndicats Démocratiques, n.d.b)

Union Types

If you read Labour History: The Early Years, you learned about the earliest form of unionization in Canada: craft unions. According to Craig Heron (2014), **craft unionism** is a "form of labour organization developed to promote and defend the interests of skilled workers (variously known as artisans, mechanics, craftsmen and tradesmen)." Early industrialization threatened the craft model, as deskilling occurred with the rise of industrial unions in the early 20th century. Modern-day craft unions continue to adopt the same philosophy as their historic counterparts. They emphasize collective bargaining and supporting their members. According to Hebdon et al. (2020), the activities they engage in outside of collective bargaining focus

on enhancing the "skill, training, and education of the craft or profession."

An example of a craft union is the Kamloops Thompson Teachers' Association (KTTA) (n.d.a), which is a union that represents 1,200 public school teachers in the Thompson-Nicola region of British Columbia. All the teachers in the KTTA are part of a larger federation called the BC Teachers' Federation (BCTF) (n.d.), which represents 50,000 public school teachers. Their focus on supporting teachers and their collective bargaining is outlined in their mission statement below.

Kamloops Thompson Teachers' Association — Mission

The Mission of the KTTA is:

- To promote the cause of education in the public schools of School District #73 (Kamloops-Thompson)
- To raise the status and promote the welfare of the teaching profession in the district of Kamloops-Thompson.
- To carry on such activities as may from time to time be ignited, prescribed or approved by the governing bodies of the Assocation or the British Columbia Teachers' Federation.
- To represent its member and to regulate relations with their employer through collective bargaining of the terms and conditions of employment.

Source: Kamloops Thompson Teachers' Association. (n.d.b). *KTTA mission statement*. Retrieved September 12, 2024, from https://ktta.ca/ktta-mission-statement

In contrast, **industrial unionism**, first heavily promoted in Canada through the arrival of the Knights of Labor in 1881, seeks to represent skilled and unskilled workers in various occupations. Most industrial unions tend to have a broader mandate beyond collective bargaining and advocate for societal reforms that benefit all working-class people (Hebdon et al., 2020). Many industrial

unions might also be classified as **social unions**, as they engage in politics to improve the working conditions and lives of their members and all workers.

Examples of industrial unions in Canada include Unifor, the largest private-sector union in the country, and the United Food and Commercial Workers (UFCW), an international private-sector union. On their websites, both unions highlight the social issues they campaign for, which include topics such as protecting reproductive rights, anti-racism, queer and trans rights, gender and equality, and food justice (Unifor, n.d.a; UFCW, n.d.b).

Business unionism, the type of unionism first promoted by Samuel F. Gompers and the American Federation of Labor and the Canadian Trades and Labour Congress (TLC), has an emphasis on enhancing the economic benefit of members while remaining politically neutral (Hebdon et al., 2020). Today, business unions may lobby the government and engage in politics in general but with an emphasis on increasing benefits and protections for unionized workers (Ross & Savage, 2023) rather than accomplishing large-scale social reforms.

Unions & Democracy

Canadian unions have typically operated within a culture of democracy (Lynk, 2000). Unlike U.S. labour law, the Canada Labour Code and provincial labour codes and acts do not have strict rules on union elections and the role of union officers (Lynk, 2002). Instead, union constitutions and bylaws generally outline the process for elections and the role and conduct of officers.

All the organizations outlined in Figure 5.4 elect officers from among their memberships and use voting through general meetings, congresses, and conventions for decision-making. At the

local level, members engage in democratic decision-making when setting their agenda for collective bargaining and ratifying the collective agreement through a vote when negotiations conclude. If they cannot conclude bargaining and the union executive recommends a strike, the members are legally required to vote in favour of strike action. These actions not only create opportunities for participation in the union but, more importantly, give members a voice in the workplace and society they may not otherwise have.

Probably one of the most prominent and vital opportunities for participation and voice that the union offers workers is at the beginning of their relationship when they vote to be represented by a union. The certification process in all jurisdictions requires the workers to show their desire for union representation by signing cards and/or voting. So, from the very beginning of the relationship, democracy is a built-in element. According to Ross and Savage (2023), union democracy makes an essential promise to workers, "join the union, and you will have a meaningful voice in the union, in the workplace and in your community." A promise Greta Whipple, the protagonist in our opening vignette, will likely welcome.

Apply Your Learning Answers

1. **Personal Factors —** She is in an organization where other stores are starting to unionize.
2. **Workplace Factors —** This is her primary reason for unionizing. She feels unsafe at work and is unhappy with her wages. You could also infer that her Managers were not addressing her concerns.
3. **Economic Factors —** Greta refers to 'stagnant wages,' which are often the result of wages not keeping up with inflation.

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Long Descriptions

Figure 5.3 Long Description: The table's five columns are as follows:

1. External Inputs (External Subsystems):
    - Legal — Common law, statutory law, and labour law
    - Economic — Product/service, labour market, money market, and technology
    - Ecological — Climate, natural resources, and physical environment
    - Political — Legislative action and executive action
    - Sociocultural — Value
2. Actors:
    - Labour (employees and associations)
    - Employers and associations
    - Government and associated agencies
    - End users
3. Internal Inputs:

- Values
- Goals
- Strategies
- Power

4. Conversion Mechanisms:

    - Collective bargaining
    - Grievances
    - Day to day relations
    - Third-party dispute resolution interventions — Interest arbitration, mediation, grievance arbitration, conciliation/fact-finding, and mediation/arbitration
    - Joint committees
    - Strikes/lockouts

5. Outputs

    - Employer outcomes — Management rights and responsibilities and efficiency
    - Labour outcomes — Union rights and security, hours of work, wages and benefits, job rights, and work rules
    - Worker perceptions — Work climate, employee morale and organizational commitment and union satisfaction and commitment
    - Conflict/conflict resolution — strikes/lockouts

Every column, except for the last, has an arrow pointing to the next column. The latter four columns also have arrows pointing down to a horizontal arrow that leads back to the first column (External Inputs). These bottom arrows are labelled "Feedback." [Return to Figure 5.3]

Figure 5.4 Long Description: The relationships between affiliate labour organizations is as follows (starting at the bottom):

- Local unions — Common linkages with regional/national unions and local labour council
- Regional/national unions — Common linkages with provincial labour federations and the Canadian Labour Congress; Possible linkages with international unions
- Local labour councils — Possible linkages with provincial labour federations
- Provincial labour federations — Common linkages with the Canadian Labour Congress
- International unions — Common linkages with the international labour federations (AFL-CIO and ITUC)
- Canadian Labour Congress — Common linkages with the international labour federations (AFL-CIO and ITUC)
- International labour federations (AFL-CIO and ITUC) are at the top of the chart

[Return to Figure 5.4]

6. Union Certification

MELANIE REED

Learning Objectives

- Discuss the steps in the union organizing campaign.
- Discuss the union certification process.
- Analyze management actions during the union certification process.

Introduction

If a group of employees in a workplace decides to have a union represent their interests with the employer, they have the legal right to do so in all Canadian jurisdictions. Regardless of jurisdiction, all labour laws outline a process for union certification. These laws also identify each party's expected conduct and role in this process — union, employer, and the relevant labour relations board. Unfair labour practices are more common during the union certification process than other interactions between the union and the employer (McQuarrie, 2015). This chapter will outline the stages of a union organizing campaign, the certification process, and how

employers and the union can interfere in the employees' private decisions to join a union by engaging in unfair labour practices.

Organizing Campaign

Once a group of employees in a workplace decides they are interested in union representation, the first stage of the process is called the organizing campaign. Unlike a political campaign, this campaign begins quietly within a group of employees known to support unionization. The organizing campaign aims to educate employees about the benefits of union representation and to collect evidence of employee support. Once sufficient support is demonstrated through signing cards, the campaign concludes with an application to the appropriate labour relations board (LRB) for union certification. Figure 6.1 below outlines the main steps of this campaign.

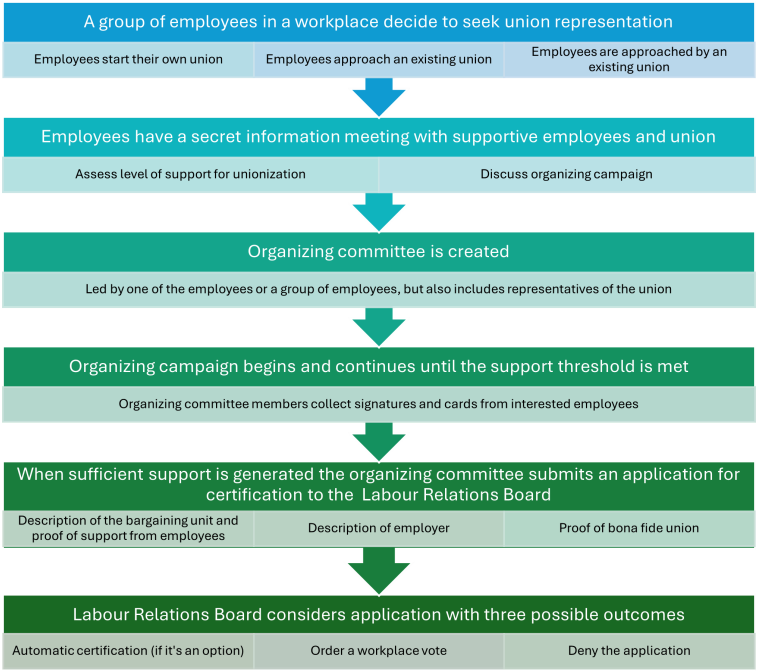

Figure 6.1 *The organizing campaign. (Created by the author) [Long Description]*

It is rare in Canada for workers to create an independent union if they desire union representation. More often, if a group of workers in a workplace discusses their desire to be represented, they will reach out to an existing union or labour federation for assistance. It is also common for unions to approach workers directly. Some unions develop campaigns to organize workers in specific industry sectors or workplaces with little or no union representation.

For example, in 2021, Teamsters in Canada developed a campaign to represent workers in Amazon warehouses. According to Love and Warburton (2021), the international union attempted to unionize nine facilities across the country, starting with a warehouse in Nisku, Alberta, where they required 40% of workers to sign cards

to have a workplace vote. At the time, none of Amazon's North American warehouses were unionized, and some attempts in the United States were unsuccessful. The Teamsters Union hoped they would have greater success with more favourable labour laws in Canada.

> "Unionization votes in Canada do not have any direct bearing on the United States, but they could raise enthusiasm," said John Logan, a labor professor at San Francisco State University.
>
> "Organizing at a place like Amazon requires workers to take a certain amount of risk," Logan said. "If they can look to other places and see that that risk has paid off for other workers, then they are far more inclined to do it themselves."
>
> Union members are going to great lengths to connect with Amazon workers, sleeping in their cars to catch the employees after graveyard shifts and forging ties at local churches. (Love & Warburton, 2021)"

Many unions and labour organizations will have a page on their website dedicated to union organizing. Here, they will explain the certification process and the benefits of joining the union and, in some instances, include information about their current organizing campaigns. Many unions also create videos to promote their union and organizing efforts. Below is an example of this style of video from the Public Service Alliance of Canada (PSAC).

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://lrincanada.pressbooks.tru.ca/?p=102#oembed-1

Source: PSAC-AFPC. (2022, May 30). *Organizing for change // En avant pour le changement* [Video]. YouTube. https://youtu.be/lwj1wQTHLv8?si=ybm4kMj-UhMf1xqk

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the video: Organizing for change

Information Meeting

Once even a small group of employees has connected with a union, the organizing campaign will begin with an information meeting. This is an opportunity for the union to discuss employees' concerns, explain what the union can offer, and explain the certification process. This meeting usually involves a limited number of employees who support unionization.

At this stage, most people in the workplace will not be aware that discussions with the union are taking place. This initial meeting happens during non-working hours and away from the workplace. Sometimes, the union will rent a meeting room in a hotel or restaurant or the group will meet at an employee's home. The purpose of keeping this meeting secret is not to alert management or non-supportive employees that an organizing campaign is underway. This prevents the employer from engaging in unfair labour practices, such as terminating or disciplining known union organizers, and prevents employees who do not support the effort from leaking information about the campaign to the employer.

Organizing Committee

If the union representatives believe there is a good chance of union certification, they will encourage the interested employees to form an organizing committee. This committee is usually made up of employees who are supportive of the union and knowledgeable about the workplace. A union representative may join the committee, but the employees will lead the campaign and discuss unionization with their co-workers. According to McQuarrie (2015), there are two main reasons for this:

1. Employees will have more credibility within the workplace.

2. Employees will be knowledgeable about workplace issues and employee concerns.

Access to employees within the organization is also a factor. Unions and employees are prohibited under labour law to solicit support for the union during working hours. Therefore, employees must engage with their co-workers outside the workplace or on breaks. The union is also not permitted to enter the workplace.

The primary purpose of this campaign is to encourage employees to show their support for union representation by signing a card or petition. The committee is attempting to reach the support threshold in their jurisdiction, which will allow them to apply for certification to the relevant labour relations board. This threshold varies by jurisdiction but is generally between 40% to 60% of employees.

In some jurisdictions, employees must also pay a small amount of money to show their support for the union. If the union is not certified as the bargaining unit, the money will be returned to the employees, and if it is successful, the funds will be put towards their union dues. For example, under federal jurisdiction, employees show their support for union representation by signing a card and paying $5 to the union (see Canada Industrial Relations Board's (n.d.a) page on labour relations certification).

The following table is from The Legal Framework chapter and provides links to all the provincial labour laws. These laws outline the certification process in each jurisdiction and the required level of support to apply for certification.

Table 6.1 Labour Relations Laws in Each Province

Province	Name of Labour Relations Law
British Columbia	Labour Relations Code (1996)
Alberta	Labour Relations Code (2000)
Saskatchewan	Saskatchewan Employment Act (2013)
Manitoba	Labour Relations Act (1987)
Ontario	Labour Relations Act (1995)
Quebec	Labour Code/Code du Travail (1996)
New Brunswick	Industrial Relations Act (1973)
Nova Scotia	Trade Union Act (1989)
Prince Edward Island	Labour Act (1996)
Newfoundland and Labrador	Labour Relations Act (1990)

Application for Certification

Once the employees and the union believe they have achieved the required threshold of support through card signing or a petition, they prepare the application for certification. This application must clearly identify three pieces of information:

1. The **employees** who will be certified as a bargaining unit.
2. The **employer** of these employees.
3. The **union** that will represent these employees.

The union must also include the cards or petitions with signatures from employees who support unionization, as the labour relations board (LRB) will verify these. Once all the required information is collected, the application for certification is submitted to the LRB. The LRB will now consider the application for certification, which commences the certification process and actively involves the employer.

Time Bars

In most jurisdictions, an application for certification can be submitted to the LRB at any time. This is true in all jurisdictions if neither a certification order with another union nor a collective agreement is in effect (McQuarrie, 2015). However, certain circumstances may impose time bars or restrictions on organizing activities. These time bars might be in place if a previous certification application was denied, revoked, or cancelled and if there is an existing relationship with another union (McQuarrie, 2015). Thus, it is crucial for a group of workers to be made aware of the legislation in their specific jurisdiction.

Certification Process

Up to this point, the employer may not know that some or all of their workers seek union representation. Once the LRB receives the application for certification, the employer will be notified, and a copy of the application will be shared with them. The employer must then make information from the LRB available to all employees in the proposed bargaining unit. The list of employees who signed cards is never shared with the employer. Still, the employer must provide information on current employees and potentially their contact information so the LRB can verify that the employees who signed the cards are employed at the organization.

Most labour boards act quickly to decide on the application's outcome to reduce the chances of employers trying to influence the employee's decision. As noted in Figure 6.1 above, the application has three possible outcomes:

1. **Deny the Application —** If the minimum threshold of support

is not met through card signing, the LRB will deny the application for certification.

2. **Workplace Secret Ballot Vote —** If the minimum threshold of support is met and a workplace vote is mandatory in the specific jurisdiction, the LRB will arrange for a vote in the workplace. An officer of the LRB will supervise the vote, and if 50% + 1 of the employees vote in favour of the union, the bargaining unit is certified. For example, if there are 20 employees in the proposed bargaining unit, 11 employees must vote in favour of the union being their exclusive bargaining agent.
3. **Automatic Certification of Bargaining Unit —** In some jurisdictions, a process known as 'card checking' or 'single-step certification' may also be an option. In this circumstance, the LRB may certify the bargaining unit without a workplace vote if a certain number of cards are signed to support union representation. This option was the norm in Canada until the mid-80s when employers lobbied for mandatory voting (Ross & Savage, 2023). However, some jurisdictions still have this option. For example, in 2022, the province of British Columbia changed its Labour Relations Code to include a single-step certification process. A union will be automatically certified if 55% of employees sign cards indicating their support (King, 2024).

Labour Relations Board Hearing

When the LRB receives the application, they will consider the information provided to determine if they should grant the application. This includes the following:

- verifying that the union is a legal entity that fits the definition of union under the specific act or code

- ensuring there is sufficient support based on the threshold amount
- determining the timeliness of the application. For example, if some signatures were collected a year ago, they may not be counted
- ensuring the bargaining union is appropriate

While it is not always required, most boards schedule a hearing soon after the application for certification is submitted. This hearing allows the parties to be heard on any of the matters listed above and to raise any concerns about unfair labour practices during the certification process. If the LRB believes a representation vote will be an outcome of the application, they may conduct the vote before the hearing and seal the ballots until the application issues are resolved (British Columbia Labour Relations Board, 2024; Suffield & Gannon, 2015). Once the hearing process is complete and the board is satisfied with the application, they will either call a vote or declare the certification of the bargaining unit.

Appropriate Bargaining Unit

One issue frequently discussed during the hearing process is the appropriateness of the bargaining unit for collective bargaining. The application for certification will include a description of the bargaining unit the union wants to represent. This description is essential to the process as the labour relations board (LRB) will check signatures against an employee list and must determine whether all the employees who signed cards are in the defined bargaining unit.

The LRB must also determine if the bargaining unit description is appropriate for certification. The guiding principle to determine if a bargaining unit is appropriate is whether or not the employees included have a community of interest. According to Suffield and

Gannon (2015), a community of interest "refers to the common characteristics regarding terms and conditions of work and the relationship to the employer for those in a proposed bargaining unit."

It is also important to note that a union does not need to include all employees in the proposed bargaining unit for it to be appropriate. However, the employer and the LRB can object to the proposed bargaining unit, and all parties can argue for adjustments during the hearing process. It is also not necessary for the proposed bargaining unit to be the most appropriate, only that it satisfies the board's definition of appropriate for collective bargaining.

According to Suffield and Gannon (2015), the following factors are relevant to defining a community of interest:

- similarity in skills, duties, and working conditions of employees [in the bargaining unit]
- structure of the employer
- integration of the employees [and their roles] involved
- location or proximity of employees

Size & Geography

The size and significance of the bargaining unit is one vital consideration, as is the physical geography of the operations. Each labour code or act will define the minimum number of positions that can be included in a bargaining unit, which in many cases is one employee. This size consideration is important for whether the union can certify the unit and whether the size is a deterrent to effective collective bargaining. A smaller proposed bargaining unit might be easier to certify for the union. For example, certifying a single store in a retail chain might be easier than doing the same for all potentially geographically dispersed stores. On the other hand, a

smaller bargaining unit might make it more difficult to collectively bargain because the employer has more economic power to withstand a strike if other stores are operational.

For example, in December 2023, approximately 50 unionized Hudson's Bay Co. workers went on strike in Kamloops, BC (Johansen & Dawson, 2023). Despite the strike occurring during the busy holiday season, it dragged on for 164 days and required a provincial mediator because the employer was unwilling to budge on their offer of a 1% wage increase during a period of very high inflation, something workers were not willing to accept (United Steelworkers, 2024). According to the United Steelworkers (2024) union, the Kamloops store is only one of two unionized Hudson Bay Co. stores in BC. The Victoria, BC store is certified under a different union and bargaining unit. In this instance, the global retailer could withstand a more extended strike, as their other stores across Canada and online remained operational. Unions need to balance the size of the bargaining unit and the implications for bargaining power against the likelihood of accomplishing the necessary threshold of support to certify. The LRB and the employer may also object to a bargaining unit that is either too large, too small, or does not make sense geographically.

Exemption of Managerial Employees

Another factor in the definition of an appropriate bargaining unit is the need to exclude any managerial employees from the bargaining unit. The rationale for this exclusion is based on the inherent conflict of interest that arises if managers are part of the same bargaining unit as the employees they oversee. One element of union democracy is that all members of a bargaining unit are at the same equal level. If a union member could have the power and authority to discipline or terminate a fellow union member, they would be in a conflict. Managers are responsible for implementing

company policies and making operational decisions, and their role is to act as a proxy or representative of the employer. Including them in the bargaining unit could compromise their ability to perform these duties objectively, particularly in matters of labour relations, performance management, and hiring.

Defining who is considered a manager, however, is not always straightforward. Generally, managerial employees have the authority to make hiring, firing, promotions, or assigning work decisions. They may also have discretion over company policies and strategic direction. In some cases, the distinction between supervisory and management roles can be ambiguous, requiring careful consideration of the employee's responsibilities and level of decision-making power. For example, a supervisor who schedules employees and directs the work of others may be able to remain in the bargaining unit, but if that supervisor is part of decision-making and strategic planning that could impact staffing levels and hiring decisions, they will likely be excluded.

According to McQuarrie (2015), the labour board will consider more than the title 'manager' in deciding whether a position can be included in the bargaining unit. If the answer is 'yes' to the first five questions below, the LRB will likely exclude the position:

1. Does the person in the position have the authority to hire, fire, and discipline another person?
2. Is the person in the position responsible for production or operations?
3. Do people in other positions report to this position? Does this position directly supervise the work of other work performed by other positions?
4. Does the person in this position have authority in a crisis or emergency?
5. Does the person in this position have access to confidential information, such as employee records or budgets?
6. If the person in the position does a mix of managerial and non-

managerial work, how much time is spent on each?

The LRB will look beyond the title and job description to determine who can be included in the bargaining unit. In some cases, managerial employees can join a different union or form their own. Some positions may also be designated as exempt from the bargaining unit but do not fit the description of a manager and may have no authority over other employees. These might be administrative staff to senior managers, owners, or employees in the human resource management department. This exclusion can be made based on having access to information about strategic and employment decisions that would be seen as conflicting with the proposed bargaining unit.

Voluntary Union Recognition

A unique circumstance that may arise during the certification process is voluntary union recognition. For a union to be the official bargaining agent of a group of workers, it must be an organization that is not dominated or controlled by an employer (McQuarrie, 2015). Unions that are heavily influenced by employers are often referred to as company unions (McQuarrie, 2015). What results from this scenario is a collective agreement that is not in the best interest of workers but instead is one that provides concessions for employers. This type of collective agreement is referred to as a sweetheart agreement. Labour legislation makes this type of dominance by employers illegal through the certification process. It is usually identified if the employer initiates the organizing campaign and shows a desire for workers to unionize.

However, there are other scenarios where the employer might decide to recognize the union as the official bargaining agent of a group of workers without a vote or the formality of the certification process. In most jurisdictions, this is acceptable and allows the

parties to submit their collective agreement to the labour relations board. An employer may recognize the union if they are satisfied that they have obtained sufficient support within an appropriate bargaining unit without undue influence and do not wish to go through the certification and voting process.

Unfair Labour Practices

While voluntary union recognition is an option in most provinces and under federal labour legislation, it is not the typical response by employers. More often, employers will resist union certification. While employers are entitled to free speech and their own opinions about unionization, communication or actions that may be seen as interfering with employees' rights to unionize are prohibited under labour legislation. **Unfair labour practices** may also be perpetrated by unions, but they are most often committed by employers during the certification process (McQuarrie, 2015). At the legislation's core is the principle that neither party (union or management) should interfere with the employee's private decision to support unionization.

According to Suffield and Gannon (2016), the legislation protecting workers in this private decision is intended to prevent two types of employer action:

1. **Threatening, Intimidating, or Coercing Employees —** This might include terminating or disciplining workers, promising to change working conditions if the union is not certified, or implying or stating that penalties will be applied if workers support the union.
2. **Interfering or Influencing the Certification Process —** The employer is also prohibited from changing working conditions during the organizing campaign and certification process. This

is intended to, again, prevent any influence over the employee's final decision. Changes under this heading might include direct benefits, such as an employer suddenly offering higher wages or adding benefits. However, it might also be more subtle, such as suddenly addressing employee concerns and hiring additional staff they had previously said they would not hire.

Once the application for certification has been submitted to the LRB, labour legislation specifies that a **statutory freeze** is in place. This is a period of time during which employers are not allowed to change the terms and conditions of employment unless it was already planned and communicated prior to the certification process (Suffield & Gannon, 2016).

While these prohibitions might seem overly restrictive, employers also have rights during the union organizing campaign and certification process. They can communicate their views with employees, provided they do not meet the above definitions. This might include emailing employees to acknowledge that they know the certification process is ongoing and that, in their view, unionization is not in the worker's best interest. However, employers must be cautious with statements about the union and certification as the context and audience might determine whether a communication is considered an unfair labour practice. For example, if a senior leader expresses their opinion that unionization would be bad for the company to a group of front-line part-time workers who are more vulnerable, it may be construed as threatening, while the same comment to non-management supervisor could be perceived quite differently. Employers are also allowed to prohibit entry to the workplace by union representatives and disallow solicitation on company property during work hours.

Dealing With Complaints

The labour relations board applies a standard of proof called the **balance of probabilities** to determine if an action or statement is an unfair labour practice. This standard differs from the standard used in criminal cases in Canada, which is beyond a reasonable doubt. It is less rigorous but requires the parties with a complaint against them to submit evidence for an adjudicator to consider and determine the probability that the action was justified (McQuarrie, 2015). For example, based on the evidence submitted, it might be reasonable that an employer terminate a known union organizer while a certification attempt is underway if the evidence shows the employee violated the company standards of conduct and a progressive discipline process was underway before the organizing campaign began. The following example from BC illustrates such a case.

Justified Action by an Employer During a Union Certification Process

In *Re RMC Ready-Mix Ltd.*, 2021 BCLRB 99, the BC Labour Relations Board considered the termination of a long-serving supervisory employee, which the union claimed was an unfair labour practice (Kondopolus, 2021). The union argued that the employer dismissed the employee to suppress union support during an organizing campaign. However, the employer contended that the termination was for just cause due to multiple breaches of its Workplace Bullying, Harassment, and Violence Policy (RWP) and the employee's existing disciplinary record.

Following complaints of bullying and harassment, the employer engaged an independent investigator who confirmed the allegations and recommended termination (Kondopolus, 2021). The board, considering the employee's prior disciplinary issues and the evidence of a toxic work environment presented by ten co-workers, concluded that the dismissal was justified. Despite some union activity at the workplace, the board found no evidence that the employee's dismissal was motivated by anti-union sentiment, thereby ruling that the termination did not constitute an unfair labour practice under the Labour Relations Code.

Read the full decision by the BC Labour Relations Board here: Re RMC Ready-Mix Ltd., 2021 BCLRB 99

Remedies

If the labour relations board determines that the employer has engaged in anti-union actions during a union organizing campaign or certification process, they will apply remedies to address the situation. The principle they use to determine an appropriate remedy is to attempt to make the situation 'whole.' This means they will try to reverse any harm done so that the parties can be in the same situation they were in before the unfair labour practices occurred (McQuarrie, 2015). This can be a challenge for the LRB as the effect of the violation could have already unduly influenced the employee's private decision to choose union representation. As a result, boards have the power to apply a range of remedies to address the situation.

According to Suffield and Gannon (2016), all of the following remedies are possible in an unfair labour practices case where the employer's action is not justified and, thus, is deemed to be motivated by anit-union animus:

- reinstatement of discharged employees
- compensation of financial loss
- interest on monies awarded
- posting or mailing of notice to employees
- access order [giving the union access to the workplace]
- freeze on working conditions
- cease and desist order
- order prohibiting future unlawful conduct
- new representation vote
- certification without a vote or remedial certification (not available in all jurisdictions)
- prosecution

The following example, again from the BC Labour Relations Board

illustrates the a remedy that might be deemed to make a situation 'whole' under the act.

Example of Remedies Applied in an Unfair Labour Practices Complaint

The case of *Gordon Food Service Canada Ltd.*, 2024 BCLRB 130 involved a complaint by the Teamsters Union, Local Union No. 31, alleging that the employer engaged in unfair labour practices under the BC Labour Relations Code by disciplining and terminating three employees during a union certification campaign (Phillips, 2024). The union claimed that the employer's actions were motivated by anti-union animus, while the employer argued that the terminations were for proper cause unrelated to union activities. The union asserted that the disciplinary actions had a chilling effect on the organizing campaign and were intended to deter union support.

The BC Labour Relations Board found that the employer's actions were tainted by anti-union animus and were conducted without proper cause, violating Sections 6(3)(a) and (b) of the Labour Relations Code (Phillips, 2024). The board ordered that the terminated employees be reinstated and made whole, which includes compensation for lost wages and benefits. Additionally, the board found that the employer had interfered with the union's certification campaign and disrupted the organizing efforts at the worksites, further validating the union's claims of unfair labour practices. The board also ordered the employer to cease and desist from committing further violations of the

code and to post their decision in a prominent location in the workplace within seven days of the order. Finally, the employer was required to permit the union to have a 60-minute meeting with employees in the two affected locations during work time at the employer's expense and without any management employees being present.

Read the full decision by the BC Labour Relations Board here: Gordon Food Service Canada Ltd., 2024 BCLRB 130

While it is difficult to know how much free speech an employer is permitted to exercise during an organizing campaign and certification process under a specific jurisdiction, it is clear that overt acts of anti-union animus without sufficient justification or evidence of just cause can result in immediate penalties. It is also important to note that in an unfair labour practices complaint, the **burden of proof** rests with the employer. For example, in the case of *Gordon Food Service Canada Ltd.*, the union does not have the burden to prove the employer's conduct was motivated by anti-union animus, but rather, it was up to the employer to prove that their actions were not. This reverse onus is required in most Canadian jurisdictions.

Media Attributions

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Long Descriptions

Figure 6.1 Long Description: The steps of an organizing campaign are as follows:

1. A group of employees in a workplace decide to seek union representation. Employees start their own union, approach an existing union, or are approached by an existing union.
2. Employees have a secret information meeting with supportive employees and union. They assess the level of support for unionization and discuss their organizing campaign.
3. An organizing committee is created. It is led by one of the employees or a group of employees but also includes representatives of the union.
4. The organizing campaign begins and continues until the support threshold is met. The organizing committee members collect signatures and cards from interested employees.
5. When sufficient support is generated, the organizing committee submits an application for certification to the labour relations board. The application includes the description of the bargaining unit and proof of support from the employees, description of the employer, and proof of a bona fide union.
6. The labour relations board considers the application with three possible outcomes
    1. Automatic certification (if it is an option)
    2. Order a workplace vote
    3. Deny the application

[Return to Figure 6.1]

7. Management of Labour Relations

Employer Strategies and Perspectives

MELANIE REED

Learning Objectives

- Describe the perspectives managers and Canadians hold towards unions and unionization.
- Explain the different strategies managers may adopt toward unionization in their workplace.

Management Perspectives Towards Unions

As discussed in Chapter 2, an imbalance existed in the earliest relationship between employers and their employees. Employers viewed their workers as commodities they purchased through wages to produce goods and earn a profit. While an exchange technically occurred between the two parties, the power differential and employer rights created a relationship more akin

to master-servant than employer-employee. Employees also lacked any firm legal protection for unionization until the 1940s. While workers and the labour movement persisted over time and Canadian workers now enjoy constitutional rights to be part of a union and collectively bargain and strike against their employer, there is still a lot of resistance from employers and, in some cases, the government.

In Chapter 1, we showed unionization rates across Canada for 2023, which revealed that an average of 30% of Canadian workers are represented by a union. We also looked at the different rates of unionization by province. A recent Angus Reid poll confirmed that these high numbers also correlate with Canadians' perspective on unions (Korzinski, 2023). Atlantic Canada and BC residents tend to have more positive views toward unions, whereas those in Alberta and Saskatchewan are more critical. This same poll also revealed that men over 54 are the most negative toward unions, particularly public sector ones, while women aged 18 to 34 are the most supportive, believing unions should hold more power. This is also consistent with the high levels of women who work in the public sector and are often represented by a union.

The same poll revealed that public sentiment is divided on union influence, with 39% saying unions are too powerful and 41% feeling they wield the right amount of power (Korzinski, 2023). Recent high-profile strikes, including federal workers in many industries, including airlines and port employees, have shaped public opinion. Despite the reported economic impacts of these strikes, nearly half (47%) of Canadians prioritize workers' right to bargain over potential economic risks. While views differ, most regions outside Saskatchewan support workers' negotiation rights despite the possible economic fallout.

Yet, despite the known economic benefits and the relatively accepting view of Canadians towards unionization, rates of union representation in Canada have remained at approximately 30%

since the early 1980s, with most Canadian workers not represented by a union. So, why is this? Stephanie Ross and Larry Savage (2021) offer some possible reasons that unions have not been able to organize beyond one-third of the population.

One of the first reasons they note is that shifts in the labour market, such as the rise of gig and part-time jobs, have made organizing more difficult (Ross & Savage, 2021). At the same time, legislative changes and pro-business policies in some jurisdictions have further hindered union efforts. They note that some workers, such as independent contractors and agricultural workers, are still prohibited from union representation.

Employers wishing to avoid the union will invest time and money in preventing successful organizing campaigns, often leading to anti-union practices and strategies (Ross & Savage, 2021). They also point out that employers may even engage in illegal union-busting activities in some cases since the penalties are worth bearing to avoid unionization in their workplace. Of course, not all employers adopt an anti-union strategy or develop a strategy for labour relations.

Labour Relations Strategy

Until the 1980s recession, most employers resisted unions and gave little consideration to developing a labour relations strategy. This resistance persisted throughout the unionization process, from employees seeking representation through organizing campaigns to discussing terms at the bargaining table.

Furthermore, the 1980s recession caused a decline in economic growth and intense competition among Canadian employers. As a result, employers began implementing human resource strategies that aligned more with business strategy than labour relations

issues. Instead of a labour relations strategy, human resource departments and management teams follow principles or philosophies to solve labour relations matters.

These issues around unions and labour relations still exist today. Although Canada has laws and constitutional protection that give workers the right to unionize, they do not prevent employers from implementing labour relations strategies. Employers can respond to the union question in their organization in many ways. Some employers employ specific strategies to prevent unionization, while others voluntarily recognize a union in a new location.

Seven Factors of Employer Labour Relations Strategy

According to Gunderson, et al. (2005), there are seven determinants of an employer's labour relations strategy:

1. Management business strategy
2. Union power
3. Union co-operativeness
4. Union militancy, especially strike propensity
5. The degree of unionization within the firm
6. Labour laws
7. Collective agreement provisions

Ultimately, management teams always have a choice of strategy to deal with unions, and this strategy may change as these seven factors change.

For example, a union has limited power over employees in a non-union workplace. However, this power differential shifts once the employees establish a union and negotiate a collective agreement. If tensions or allegations of unfair labour practices occur during

the organizing campaign, unions may be less cooperative with management. Consequently, the employer's strategy for engaging with the union may change.

Reflective Question

Think about an organization you have worked in. How much of an impact do you think any of Gunderson, et al. (2005) seven factors have on its management's labour relations strategy?

Five Strategies for Unions

(Click on the arrow to read about each strategy)

An interactive H5P element has been excluded from this version of the text. You can view it online here: https://lrincanada.pressbooks.tru.ca/?p=42#h5p-2

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the interactive activity: Five Strategies for Unions

Conclusion

While unionization rates declined after the 1980s public sector boost, they have remained steady over the last two decades. Unions continue to actively pursue certification of workers who lack union representation, but they face political, legal, and societal barriers. Many Canadians view unions as beneficial, especially those currently represented, but most employers still resist unionization efforts. Employers may react to union organizing efforts, but they may also have strategies to deal with existing unions or ward off workers' attempts. Of course, the likelihood of an employer developing a labour relations strategy depends on many factors in the same way a worker's decision to seek union representation does.

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8. Resolving Collective Bargaining Disputes

MELANIE REED

Learning Objectives

- Discuss the various methods employers and employees (unions) can use to resolve disputes over collective bargaining.
- Discuss the prevalence of strikes and lockouts in Canada.
- Describe the preconditions for a legal strike or lockout.
- Explain the possible motives and functions of strikes and lockouts.
- Explain picketing and discuss the use of replacement workers.
- Discuss third party interventions to resolve collective bargaining

Introduction

When collective bargaining is at an impasse, there are a number of ways that employers and employees might respond to break the impasse. It is certainly common for the parties to take a break from bargaining, called a cooling off period, but there are also other more significant actions they can take. In some cases, bargaining conflicts result in one party taking some form of industrial action, and in other cases, they may engage the services of a third party to help break the deadlock. This chapter will explore all these options, beginning with strikes and lockouts.

Strikes & Lockouts

Strikes and lockouts are the most visible and significant actions taken by either unions or employers to advance their positions during collective bargaining. Under the *Canada Labour Code* (1985), an industrial **dispute** refers to a dispute arising in connection with the entering into, renewing, or revising of a collective agreement. These disputes often manifest as a strike or lockout, both of which exert pressure, typically of an economic nature, on the opposing side to encourage concessions that will break the bargaining impasse.

Although visible and often seen in the headlines, strikes and lockouts in Canada are quite rare. Approximately 95% of collective bargaining concludes without industrial disputes (Suffield & Gannon, 2015). The media, however, often report on strikes and lockouts, giving the perception that industrial disputes are more prevalent in Canada. A successful conclusion to a renegotiated collective bargaining agreement is not as newsworthy as a picket line in front of an airport.

The *Canada Labour Code* (1985) defines a **strike** as:

> a cessation of work or a refusal to work or to continue to work by employees, in combination, in concert or in accordance with a common understanding, and a slowdown of work or other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output.

This could involve a total work stoppage or, in some cases, a less extreme measure such as a "work-to-rule" campaign, where employees do only the minimum required by their job descriptions. For instance, teachers might limit their duties to only direct classroom instruction, opting out of extracurricular activities or meetings.

Similarly, **rotating strikes** provide a strategic, localized approach, with only specific groups of workers striking in different locations or timeframes. The 2018 Canada Post (CUPW) strike is an example, where workers in various cities participated in the strike on staggered days rather than all at once (Dangerfield, 2018). These are still considered strikes under most labour legislation and, thus, unions are required to follow the same procedures before initiating these work slowdowns.

On the employer side, a **lockout**:

> includes the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of their employees, done to compel their employees, or to aid another employer to compel that other employer's employees, to agree to terms or conditions of employment. (Canada Labour Code, 1985)

Again, the intent is to put pressure on the union and employees to concede to their proposed terms. According to Employment and Social Development Canada (2024), lockouts are less common than

strikes in Canada, though the duration of lockouts appears to be longer than strikes.

Table 8.1 Comparison of Strikes & Lockouts in Canada (2015-2024)

Year	Strikes Started	Lockouts Started	Strikes in Effect	Lockouts in Effect	Strike Duration (average # of days)	Lockout Duration (average # of days)
2015	162	26	170	67	23.5	168.8
2016	120	21	127	62	34.4	38.2
2017	107	10	117	17	69.8	89.9
2018	70	12	104	16	44.3	108.5
2019	104	11	114	14	29.7	62.4
2020	47	10	55	11	31.5	109.5
2021	158	23	161	25	18.5	54.7
2022	152	5	168	8	57.4	62.1
2023	730	15	762	16	23.9	54.3
2024	117	8	718	11	6.7	66.5

Created by the author with data from Employment and Social Development Canada (2024).

Both strikes and lockouts are regulated by labour relations laws and codes. The preconditions for strikes and lockouts are discussed in the next section. However, there are some circumstances where unlawful labour disputes occur. Illegal strikes, known as **wildcat strikes**, bypass these legal procedures and are initiated without meeting statutory requirements. Wildcat strikes may arise suddenly as a response to a contentious employer decision. For instance, in 2020, Alberta healthcare workers staged a wildcat strike protesting a provincial proposal to contract out jobs, resulting in the union facing substantial penalties, including a loss of $1.6 million in dues (French, 2023). Such actions, while impactful, are often quickly

curtailed due to their illegality and the significant penalties they carry.

Preconditions for Strikes & Lockouts

Under Canadian labour legislation, there are specific circumstances where a strike or lockout can legally occur. While the laws created in the 1940s, like PC1003, forced employers to recognize unions as the bargaining agent for employees and compelled them to negotiate collectively, they also curtailed the action unionized workers could take against their employer. For example, workers are no longer permitted to engage in recognition strikes to demonstrate their support for unionization since the law provides the certification process. Nor can they engage in large-scale general strikes like the Winnipeg General Strike to show discontent for the treatment of workers, show sympathy for other workers, or engage in political protest (Ross & Savage, 2023).

Some labour legislation narrowly defines that a strike's purpose must be to pressure the employer to compel them to agree to certain terms and conditions during collective bargaining (Suffield & Gannon, 2015). The specific requirements are in the labour code or act that regulates that specific jurisdiction, but all legislation requires the following:

1. The current collective agreement must have expired.
2. The parties must be actively engaged in collective bargaining and must have failed to reach an agreement.
3. A certain amount of notice must be given to the other party.
4. In most jurisdictions, the parties must have engaged in conciliation and waited a specific amount of time.

In the case of a strike, the union must also have a clear **strike mandate** from its membership. This mandate must indicate that

most employees in the bargaining unit support the strike. This is obtained through a strike vote, usually conducted through a secret ballot process. While the vote only requires 50% plus one member to vote in favour of the strike, unions typically will not move forward with a much stronger mandate. To lock out workers, the process is the same, but employers are not required to produce evidence of a vote within the organization. Below is a description of the process required under the Ontario Labour Relations Act.

Requirements for a Legal Strike or Lock-out in Ontario

Before a legal strike or lock-out

Unions and employers regulated under the LRA must do the following before they may legally engage in a work stoppage:

- The collective agreement between the union and employer must be expired, or the union and the employer must be negotiating a first collective agreement
- The union and employer must:
    - be in a sector that has the ability to strike or lock out
    - meet with a conciliation officer appointed by the Minister of Labour, Immigration, Training and Skills Development
    - receive a no-board notice or a notice of a conciliation board's report from the Minister of Labour, Immigration, Training and Skills Development
    - wait until the 17th day after the day the no-board notice is released (or wait until the 10th day after the day a conciliation board's report is released)

- The union must also hold a strike vote and the majority of the votes must be in favour of going on strike. This doesn't apply to employees in the construction industry or those doing maintenance who are represented by a construction-related union if they or another employee in the bargaining unit were referred to the employer by the union.

Source: Ministry of Labour, Immigration, Training and Skills Development. (2024). *Collective bargaining*. Government of Ontario. https://www.ontario.ca/page/collective-bargaining © King's Printer for Ontario, 2019

Motivations for Strikes & Lockouts

Strikes and lockouts are intended to put economic pressure on the other party. However, they can signify more profound challenges in the negotiation process. The motivations behind these actions may stem from a mix of negotiation inexperience, external economic factors, intra-organizational dynamics, and fundamental differences in union-management relationships. These factors can influence a party's decision to initiate a strike or lockout, sometimes as a strategic choice and other times as a miscalculated response to complex or misunderstood issues.

One key motivator in industrial action is a **lack of bargaining experience**. Inexperienced negotiators may struggle to interpret the other party's position or willingness to compromise, leading to miscalculations. For instance, new union representatives may perceive management's initial offers as inflexible when, in reality,

there is room for compromise. Such misunderstandings can cause one party to resort to a strike or lockout under the mistaken belief that industrial action is the only way to force a settlement.

McQuarrie (2015) notes that strikes resulting from these misinterpretations are often unnecessary since the parties might have resolved their disagreements without a work stoppage. This scenario aligns with the Hicks Model, which suggests that when parties believe they can gain more through a strike or lockout, they narrow the 'zone of agreement' and mistakenly assume there is no common ground (Katz et al., 2017). Thus, they move forward with industrial action when there is little to be gained or there is still room to negotiate. This is often referred to as engaging in a strike or lockout as a **mistake**.

Another factor is **limited disclosure of information**, where one party withholds critical data or insights that could affect the other side's perception of what is possible. For example, if an employer fails to disclose financial constraints, unions may believe that additional concessions are achievable and press for a strike, only to discover later that their goals are unrealistic. The complexity of issues on the bargaining table can further complicate this dynamic. When negotiations involve novel or complex proposals, both parties may have difficulty understanding each other's positions and recognizing potential areas of agreement.

External economic conditions can also influence the likelihood of strikes and lockouts. When unemployment is low, workers may feel more confident about walking off the job, especially if alternative employment is available. Similarly, inflation and rising costs can prompt workers to demand higher wages to keep pace with the cost of living, increasing the likelihood of a strike. **Labour laws** also play a role, particularly where the legality of replacement workers and third-party interventions differ across jurisdictions. In British Columbia, for instance, strikes and lockouts can occur without mandatory third-party intervention, which may lower the barrier

for industrial action (British Columbia Labour Relations Board, 2023).

Historical relationships and the level of trust between the union and management also affect the probability of strikes and lockouts. A history marked by grievances and unresolved disputes can foster mistrust, increasing the likelihood of conflict during bargaining. McQuarrie (2015) suggests that many strikes reflect a fundamental lack of trust in the union-management relationship, as both parties approach workplace governance with distinct interests and philosophies. In such cases, strikes may serve as a way for employees to **voice collective discontent** or express a desire for greater influence over workplace conditions. This "voice" function of strikes highlights that industrial action is not always about economic gains; it can also be an outlet for tension and frustration that builds up during bargaining and day-to-day union-management relationships.

Union leadership also plays a critical role in **mobilizing members**. Leaders must not only channel worker dissatisfaction but also make a compelling case that a strike is a reasonable and potentially productive course of action (McQuarrie, 2015). Strikes often serve a dual purpose: they press for concessions while allowing members to unify in pursuit of common goals. In some instances, strikes or lockouts may be used as a cooling-off period, giving negotiators a break from high-stakes bargaining. In these cases, the mere threat of a strike or lockout may be enough to bring both sides back to the table with a renewed commitment to reach an agreement, demonstrating how industrial action can function as both a bargaining tool and a form of collective expression.

Bargaining Power

In union-management negotiations, bargaining power is a critical factor shaping the motivations for strikes and lockouts. Bargaining power is "the ability to obtain objectives despite the resistance of others" (Craig, 1990). However, it is not always straightforward to determine who holds the most power during a negotiation. According to McQuarrie (2015), external conditions like public opinion, legislation, and the state of the economy play a significant role in shaping bargaining power, as do socio-demographic factors (e.g., unity among negotiators) and organizational dynamics (e.g., internal disputes within union or management). For example, if a union perceives internal conflicts within management, it may use this knowledge to strengthen its position.

Both employers and unions have specific factors that impact their bargaining power. Employers gain power from factors like inventory size (allowing continued production during a strike), competitiveness, operational structure, and the ability to function without a full workforce. On the other hand, unions gain leverage from strong member commitment to issues, strike funds, and strategic timing of strikes (McQuarrie, 2015). While using power is primarily a distributive tactic, it can lead to mistrust and damaged relationships. Thus, integrative techniques like focusing on mutual problem-solving and using empathy to appreciate the other parties' perspectives and needs can often lead to more amicable resolutions and fewer disputes.

Picketing & Replacement Workers

Picketing is a visible aspect of a strike or lockout where workers from the bargaining unit, along with their supporters, form a picket

line outside the employer's premises while carrying signs or distributing leaflets. This action aims to draw public attention to the labour dispute, deter people from entering the premises, and generate public support for their cause.

While the right to strike is protected under the Canadian Charter of Rights and Freedoms, picketing itself is not directly covered, meaning it can be subject to reasonable restrictions. Provincial labour relations acts and codes typically protect picketing, but picketers are required to avoid making libelous statements and respect any limitations on secondary picketing, which involves picketing at sites not directly involved in the labour dispute. Additionally, interference with shared premises is generally restricted, ensuring that picketing does not unduly disrupt other businesses or organizations that may occupy the same space.

Picketing is also an essential activity for union members who cannot work. When workers are on strike or locked out by their employer, they are not earning an income. The union provides striking workers with **strike pay**, but it is often much less than they would earn in the workplace. Unions generally contribute some of the dues they collect each month to a strike fund, which may be managed locally or by a parent union. The union's constitution and bylaws will dictate how much strike pay is paid to workers each week. For example, according to the Unifor Strike and Defense Fund Policy, workers on strike will receive $300 per week (Unifor, 2022). In many union constitutions, there is a requirement that to receive strike pay, workers must contribute a certain amount of time to the picket line.

Figure 8.1 *Teamster rail workers at Canadian National join picket of CSN hotel workers at the Bonaventure in Montreal Aug. 22. Rail workers at CN and Canadian Pacific Kansas City have walked out in nationwide fight for safety (Militant) Used with permission*

Replacement workers, also known as "scabs," are individuals hired or assigned to perform the work of striking or locked-out employees. The use of replacement workers is one of the most contentious issues in Canadian labour law, as it can undermine the impact of a strike by allowing the employer to maintain operations. Proponents argue that an employer should have the right to continue its business, especially if a prolonged shutdown could result in lasting harm (McQuarrie, 2015). Workers are not prohibited from earning income from outside sources during a strike or lockout, so those in favour of replacement workers argue that it is only fair that employers should also be able to stay afloat. However, critics argue that allowing replacement workers shifts the balance of power in favour of employers, as it diminishes the economic impact of a strike and removes any incentive for employers to negotiate. Additionally, the presence of replacement workers can lead to heightened tensions and potential violence on picket lines, as striking workers may confront them when they enter or exit the workplace.

Canadian jurisdictions differ in their regulations regarding replacement workers. British Columbia and Quebec have restrictions preventing employers from using replacement workers during a strike or lockout, and in 2024, Manitoba's NDP government also proposed new legislation but is facing push-back from the opposition party (Lambert, 2024). Recently, Bill C-58 introduced changes to federal law that, starting June 20, 2025, will prohibit employers in federally regulated sectors from using replacement workers, except in cases where public health and safety are at risk (Wilson, 2024). The bill also mandates that employers and unions establish essential work requirements early in the bargaining process to ensure public safety during a strike or lockout. If the parties fail to agree, the Canada Industrial Relations Board (CIRB) will determine the necessary activities that fall under the essential service designation. This change in the federal sector could potentially shift leverage toward unions by making it harder for employers to circumvent the economic impact of a strike (Wilson, 2024).

Third-Party Interventions Into Disputes

Strikes, lockouts, and work slowdowns are not the only options employees and employers have to resolve their collective bargaining disputes. In Canada, three third-party interventions are available to help the parties break their deadlock and conclude collective bargaining. In all jurisdictions, the parties can engage the services of a conciliator or mediator or refer their dispute to arbitration to have the arbitrator determine the outcome.

Conciliation is generally the initial step to address negotiation deadlocks in most Canadian jurisdictions. During conciliation, a neutral conciliator assesses the positions of each party and submits a report to the Minister of Labour, often a prerequisite before a

strike or lockout. Although conciliation serves to clarify key issues without directly influencing the negotiation process, it rarely leads to dispute resolution. Studies indicate that conciliation does not substantially reduce either the occurrence or duration of strikes, as parties may not yet be prepared to make the necessary compromises at this stage. That said, conciliation can move the parties past mistaken perceptions of the other party by bringing all the issues and constraints to the surface. Recommendations contained within the conciliator's report are not binding on the parties.

Mediation offers a more hands-on approach than conciliation, involving active participation from a mediator who attends bargaining sessions and meets with the parties, both separately and together (McQuarrie, 2015). One of the benefits of mediation is that they actively engage in bargaining and can directly assist the parties in developing possible solutions. The mediator often provides recommendations on a settlement to the parties. Since they have been actively involved in bargaining, these recommendations are often taken more seriously by the parties (McQuarrie, 2015).

Mediators can be requested by either party or appointed by the Minister of Labour. In most jurisdictions, mediation services can also be accessed through the Labour Relations Board. In cases where negotiations are particularly challenging, certain provinces allow for appointing a special mediator with extended powers and protections. While mediators can propose non-binding settlement terms to guide the parties toward a resolution, these recommendations are not obligatory, and the mediator can withdraw if it becomes evident that a strike or lockout is likely. This approach is beneficial for more complex bargaining situations, although there is no guarantee that the mediator's efforts will prevent industrial action. Some other benefits of mediation are that the process remains confidential, it can help maintain positive

working relationships, and, like conciliation, any recommendations made by the mediator are non-binding on the parties.

Interest arbitration involves an arbitrator making binding decisions on the terms of the collective agreement. It is the most comprehensive third-party intervention, but it is also invasive and can be costly. This intervention can be requested by either party or mandated, especially in industries where strikes would cause significant disruption. If the government passes back-to-work legislation and forces the end of a strike or lockout, the parties are usually forced into interest arbitration to resolve their collective bargaining dispute.

During interest arbitration, a formal hearing is held, which allows both the union and management to present oral and documented evidence to support their rationale of the bargaining proposals they would like accepted. The arbitrators or arbitration panel will call witnesses and ask questions to clarify each party's position to enable them to make an informed decision. A commonly used approach in arbitration is final-offer selection, where the arbitrator chooses the contract terms they feel suit the union and management best (McQuarrie, 2015). They do not have to choose any of the proposals either side presented.

Within **final-offer arbitration**, there are two main types:

1. Total-package
2. Item-by-item

In **total-package final-offer arbitration**, each party submits a complete package of proposals, and the arbitrator selects one package in its entirety. This format encourages each side to present realistic proposals but creates a "win-lose" situation, with one party's full proposal accepted and the other rejected (McQuarrie, 2015).

In contrast, **item-by-item final-offer arbitration** allows the

arbitrator to pick individual items from each proposal, potentially leading to a more balanced agreement. This method minimizes the risk of either party's proposal being entirely disregarded. Still, it may result in a compromise that lacks the integration each side desires, leaving both parties somewhat unsatisfied (McQuarrie, 2015).

Arbitration is advantageous in that it ensures a definitive resolution without a strike or lockout, but it can also lead to dissatisfaction among the parties, as the arbitrator's decision is binding and removes some degree of control from both sides. These third-party interventions — conciliation, mediation, and arbitration — play essential roles in Canadian labour relations by providing structured means of resolving disputes and preventing prolonged work stoppages. Each approach has its strengths and limitations, offering various paths toward agreement while considering each negotiation's distinct needs and dynamics.

Under federal jurisdiction, employers and unions are also able to access the Federal Mediation and Concilitation Services to help resolve their collective bargaining disputes. The excerpt below describes the services provided. What is particularly interesting is the the federal government will provide training to the parties and aid in developing their relationship with each other if requested.

Federal Mediation and Conciliation Services (FMCS)

The Federal Mediation and Conciliation Service (FMCS) was established to provide dispute resolution and relationship development assistance to trade unions and employers under the jurisdiction of the Canada Labour Code (Code). The Code governs federally regulated employees in key sectors of the economy.

The FMCS offers employers and unionized employees:

- dispute resolution support through the services of conciliation and mediation officers—third parties whose mandate is to assist both parties in reaching a mutual agreement; and
- relationship development services that are intended to prevent disputes before they occur. This is achieved by training workshops on collective bargaining and joint conflict resolution. The FMCS also provides grievance mediation services. These are all ways of resolving disagreements and improving industrial relations during the term of the collective agreement.

The FMCS also plays an important role in another method of conflict resolution: arbitration. It coordinates the appointment of arbitrators, adjudicators and referees to resolve certain types of disputes governed by the Code,

such as grievances, unjust dismissal complaints and wage recovery appeals. The FMCS also coordinates appointments under the Wage Earner Protection Program Act (WEPP Act).

Source: Employment and Social Development Canada (2022). *Federal mediation and conciliation service*. Government of Canada. https://www.canada.ca/en/employment-social-development/services/labour-relations/reports/2017-federal-mediation-conciliation.html#serv

Media Attributions

- **Figure 8.1** "Teamster rail workers at Canadian National join picket of CSN hotel workers at the Bonaventure in Montreal Aug. 22" by Militant is used with permission.

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9. Grievance Arbitration Process

Collective Agreement Administration

MELANIE REED

Learning Objectives

- Differentiate between the different types of grievances.
- Describe the grievance and arbitration process.
- Describe procedural onus and standard of proof
- Discuss alternative methods to resolve a grievance process.

What is a Grievance?

A grievance is an alleged violation of one or more terms or conditions contained within a collective agreement. The grievance process is how unions and management can resolve issues about the interpretation, application, or alleged violation of the collective

agreement. It is also a mechanism to ensure that both parties are following the mutually agreed upon collective agreement. An employee or the union might file a grievance about any of the collective bargaining agreement's agreed-upon clauses.

Here are some examples of what might be grieved:

- An employee has concerns about the way their manager allocated opportunities for overtime.
- The union disagrees with management's application of seniority in the promotions clause. The union believes that based on how the clause is written, seniority should have more priority than qualifications.
- An employee objects to the level of discipline they receive for a minor violation of company policy.

A grievance may be filed for any alleged violation of a clause in the collective agreement. However, if the collective agreement is silent on a matter — meaning there is no article or language about it — it is a **management right** and, therefore, not something that can be grieved. For example, in our first scenario above, if the collective agreement does not specify how opportunities for overtime are allocated in the collective agreement, it is a management right to decide and, thus, not subject to grievance. However, according to Suffield and Gannon (2016), there may also be circumstances where an action appears to be a management right, but it might conflict with another clause in the collective agreement. In a situation like this, the union may grieve the employer's action to resolve this discrepancy in the agreement and potentially introduce new, clearer language as a remedy.

Another inherent principle related to the grievance process is the **work now, grieve later** rule, sometimes referred to as **obey now, grieve later** (Suffield & Gannon, 2016). Essentially, this means that if an employee and/or the union believe that the employer has violated the collective agreement, the employee is expected to

continue working knowing they can later grieve the action or inaction of the employer. So long as their health and safety are not at risk and the employer's actions are legal, the employee cannot withdraw their labour. They will, however, have the opportunity to file a grievance against the employer afterwards. This ensures the workplace is not disrupted and prevents illegal strikes.

Benefits of Grievances & Arbitration

One of the key benefits of the grievance arbitration process is that it provides both parties with a legal way to resolve their differences. In a non-union setting, the employer may implement a grievance process, but it will not necessarily have legal backing. In a unionized setting, employees no longer have the right to sue the employer for their actions because they have the legal right to a grievance arbitration process. This means the employer is obligated to respond to formal complaints filed by the employee and/or the union within the stated timelines in the collective agreement. Employees also benefit by having a formal way to challenge management's actions and decisions, giving them a sense of control over their work and workplace conditions. While this significantly benefits employees and the union, it also benefits management because they have a mechanism for direct communication and consultation (Suffield & Gannon, 2016). This communication channel can also help ensure consistency in the application of rules and processes by managers, which may reduce turnover as employees feel they have a voice for discontent in the workplace (Suffield & Gannon, 2016).

Types of Grievances

There are three main types of grievances one might encounter in a unionized workplace:

1. **Individual Grievance —** This is the most frequent type of grievance, occurring when an employer's action (or inaction) directly affects an individual employee. Common issues include disciplinary actions or denial of specific requests, like leave requests. For example, if an employee believes a leave request was unfairly denied, they might file an individual grievance.
2. **Group Grievance —** A group grievance is filed when an employer's action impacts multiple employees in the same way. For instance, if an employer improperly applies a contractual term affecting a particular group of employees, they might collectively raise a group grievance. An example could be a misinterpretation of contract work criteria that negatively affects a group of employees.
3. **Union or Policy Grievance —** This type is initiated by the union on behalf of all employees, addressing an employer's action (or inaction) that potentially violates the collective agreement and impacts everyone. For example, if the employer's interpretation of vacation accrual during a leave is perceived as violating employment standards legislation, this might result in a policy grievance as it affects all employees in the bargaining unit.

What Type of Grievance?

Consider the following scenarios and try to determine which type of grievance they might be:

1. A company implements a new policy requiring mandatory overtime for the clean-up team at a popular concert venue despite the collective agreement stating that overtime should be voluntary.
2. An employee applies for an internal job posting within the company, believing they meet all the qualifications outlined in the job description. However, the employer denies the application without providing a clear reason.
3. The employer changes the annual performance evaluation process, introducing a new rating system directly impacting eligibility for pay raises and bonuses. The union believes this new system violates the collective agreement's terms on compensation adjustments.

(Scroll to the bottom for the correct answers)

The Grievance Process

Labour relations legislation in Canada requires that every collective

agreement has a process to resolve disputes that might arise about its interpretation or application. While each collective agreement will have variations in the steps, all grievance processes must have arbitration as an option. This ensures that even if the parties cannot resolve the dispute during the grievance process, there is a final avenue to resolve differences through a neutral third party. Most grievance processes follow a similar stage of steps and responses. Below is the outline of a typical grievance process.

Step 1: Informal Discussion

The process often begins with an informal discussion between the employee (and sometimes a union representative) and their immediate supervisor. The goal is to resolve the issue without the need for a formal grievance. Many issues can be resolved at this stage if both parties are open to dialogue. Usually, the employer will have a time limit to respond. If the issue cannot be resolved, the process moves to Step 2.

Step 2: Filing a Formal Grievance & Initial Meeting

If the issue is not resolved informally, the employee (with the union's assistance) submits a formal written grievance. This document details the complaint, the specific violation of the collective agreement (or other terms), and the remedy sought. The grievance document will typically be sent by a representative from the union grievance committee or executive team to the human resource department or the relevant manager.

The employer representative (HR and/or manager) will then review

the grievance and begin to investigate. The union will also conduct their own investigation. This may involve identifying the facts, collecting data, interviewing relevant parties and witnesses, and examining the collective agreement's terms. Management will then arrange a meeting between the union, the affected employee (optional), and representatives of management. This will usually include a shop steward or business agent and usually the manager and an HR representative. After the meeting, the employer will provide a written response, either accepting or rejecting the grievance or proposing a resolution. Sometimes, a resolution is agreed to during the meeting and confirmed in writing afterwards. If the grievance is denied at this step, it will be referred to Step 3.

Step 3: Higher-Level Review and Discussion

If the grievance is still unresolved after Step 2, it may be escalated to higher-level management or a union official. This is typically the final stage before arbitration, allowing both sides to have another opportunity for resolution. Again, a meeting will be scheduled and potential resolutions proposed by either party. If it is an individual grievance, the employee may again be present, but often a senior union representative and the shop steward will attend this meeting without the employee. Management may involve a more senior HR representative at this point and/or include a senior manager, director, or even the CEO. Again, management will respond after the meeting in writing, either accepting a proposed resolution or denying the grievance once again. If the grievance is denied, the parties will then have to decide to move the grievance to arbitration or propose an alternative dispute resolution process like mediation.

Grievance Timelines

Collective agreements will outline the timelines both parties are required to follow throughout the grievance process. These timelines begin with the employee or union submitting the grievance in a timely fashion. If an employee or the union becomes aware of a violation of the collective agreement, they are responsible for bringing this forward within a certain time frame. This will be spelled out in the collective agreement. Failure to do this might result in the employer refusing to accept the grievance. While this rarely occurs, it can occur without reasonable reasons for a delay. Management also has timelines for responses at each stage of the grievance process. Again, these will be documented in the collective agreement but can be amended by mutual agreement between both parties.

Grievance Timelines in the Collective Agreement between 49th Parallel Coffee Roasters Inc. and Teamsters Local No. 213

Article 13 – Grievance Procedures

b) Any grievance which is not presented within fifteen (15) calendar days following the event giving rise to such grievance shall be forfeited and waived. In the case of grievances regarding payroll errors, any such grievances not presented within thirty (30) calendar days following the event giving rise to such grievance shall be forfeited and waived. This provision shall not be used to deny any employee their rights under the BC Employment Standards Act or Labour Relations Code.

c) The Steps of the Grievance Procedure shall be as followed, and the timelines set out in this article shall only be extended upon mutual agreement. Nothing precludes the parties to this Collective Agreement from meeting at any stage of the following procedures in an attempt to resolve the dispute(s).

Source: Canta, W. (2021). *Collective agreement between 49th Parallel Coffee Roasters Inc and Teamsters Local Union No. 213: August 1st, 2021 — July 31st, 2025.* https://www.lrb.bc.ca/media/19798/download?inline

Grievance Meeting Example

This video illustrates a Step 2 grievance meeting between an employer, an employee, and their shop steward. It is based on a fictitious scenario acted out by a group of students and is provided for educational purposes only. As you watch the video, consider what the parties have done well and what they might improve upon.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://lrincanada.pressbooks.tru.ca/?p=106#oembed-1

Source: The HR Mentor. (2024, November 4). The Grievance [Video]. YouTube. https://youtu.be/3Guqc1vofms

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the video: The Grievance

Arbitration

If management and the union cannot resolve the grievance through the three steps, they will have to decide if they want to refer the dispute to arbitration. According to Suffield & Gannon (2016), arbitration "is an adversarial process in which the parties present evidence to the arbitrator who makes a decision or order on the basis of the evidence." The process is formal, legalistic, time-consuming, and very costly for both parties, so arbitration is usually chosen as a last resort.

Interest vs. Rights Arbitration

At this point, it is important to clarify that there are two different

types of arbitration in labour relations. When we refer to arbitration for a grievance, we are talking about **rights arbitration**. It is a dispute about the agreed-upon terms in the collective bargaining agreement. We also use arbitration to resolve our differences during collective bargaining. This is called **interest arbitration** and was discussed in Chapter 10: Collective Bargaining Disputes.

Arbitrators

An arbitrator or arbitration panel will decide the outcome if a grievance is referred to arbitration. Arbitrators are usually lawyers or someone with an extensive legal and labour relations background. In some instances, the parties will agree in the collective agreement on a specific arbitrator, but this can be limiting if the arbitrator is not available. Arbitrators can be in high demand, and thus, the parties may have to be flexible on their arbitrator of choice. When a collective agreement states an arbitration panel is to be used, one arbitrator will be selected by management and another by the union. The third member of the panel will be mutually agreed to. In all cases, if the two parties cannot agree on an arbitrator, the labour relations board in their jurisdiction will appoint one if requested (British Columbia Labour Relations Board, 2023a).

Arbitrators will preside over the process to determine how to resolve the issue. They will investigate the grievance by reviewing documents, examining the collective agreement, hearing witness testimonies, and considering decisions made by previous arbitrators in similar cases. This usually occurs through a formal hearing that is like a court proceeding. It is not held in a courtroom but is usually away from the workplace, often in a hotel or conference centre meeting room. The arbitrator's decision is final and binding on the parties. The positive aspect is that the decision will conclude the grievance, and the parties must move forward and implement whatever remedy or decision the arbitrator makes.

The downside is that one party likely will not be happy with the outcome.

Legal Elements of Arbitration

Once union and management have agreed to arbitration, both parties will usually hire their own lawyer who will present their case and question witnesses during the arbitration hearing. At the hearing, a formal legal process will unfold that begins with the arbitrator confirming **jurisdiction**. Before the lawyers present their opening statements, the arbitrator will confirm that they have jurisdiction under the collective agreement to decide the case. McQuarrie (2015) describes the importance of this: "under Canadian labour law, the arbitrator is empowered to rule only on whether an interpretation, application, or administration of the collective agreement is correct; the arbitrator is not empowered to change the terms of the collective agreement." Before the parties make their opening statements, any other objections to the process, such as timeline concerns or whether the dispute constitutes a grievance, will be brought forward to the arbitrator for consideration (McQuarrie, 2015).

Another element that will be identified before the hearing begins is whether the union or management has the **procedural onus** to prove their case. In a proceeding like this, the person who brings the complaint forward (usually the union) has the obligation to go first and prove their case, while the other party responds to the allegations. Since unions usually file grievances, they typically have procedural onus during arbitration. However, if the grievance involves discipline or discharge (termination), the onus is reversed, and the employer must go first and prove that they were justified in taking the alleged action against the employee. According to McQuarrie (2015), the reason for this is that it would be challenging for an employee or the union to explain why the employer took

these actions as the rationale and evidence are possessed by the employer, not the employee.

The final element determined before the hearing proceeds is the **standard of proof.** In most arbitrations, the arbitrator will use the **balance of probabilities** to decide the case. This standard is used in civil proceedings and is less stringent than the 'beyond a reasonable doubt' standard used in criminal cases. It means that the arbitrator can decide that 'on balance,' one party's case is more reasonable even if it is not perfectly complete (McQuarrie, 2015). In some cases, the arbitrator may require a higher standard of proof, such as when an employee is accused of theft or violence.

Arbitration Proceeding

An arbitration proceeding follows a process similar to one in a courtroom. Once the procedural onus is determined, the party with the onus will go first, and their lawyer (or representative) will make an opening statement. This statement summarizes the case, what part of the collective agreement was violated, and the remedy sought. Then, the opposing party's lawyer will make their opening statement. The proceeding party will then directly examine their first witness, followed by a cross-examination of that witness by the opposing party. This continues until the proceeding party has examined all their witnesses and presented all their evidence. Then, the opposing party will do the same, calling their witnesses for direct examination followed by a cross-examination of each witness by the proceeding party. Once all witnesses have been questioned and all evidence brought forward, the proceeding lawyer delivers their closing statement, followed by the lawyer for the opposing party. After the hearing concludes, the arbitrator will retire to consider all the evidence and make a decision.

Arbitration Award

Arbitration hearings might take days or even weeks to complete. Once they are done, the arbitrator has to review all the evidence and make a decision that will be binding on the union and management. Some arbitrations can be very complex and can take many months to conclude. Some collective agreements may state timelines for the award, but generally, the arbitrator takes the time needed to make the best possible decision.

According to McQuarrie (2015), the following elements will be included in the arbitration award document:

- Summary of evidence by both parties
- The arbitrator's assessment and consideration of the evidence
- The arbitrator's decision and an explanation for their decision (rationale)
- The prescribed remedy if the grievance is justified (upheld)
- Any direction for implementing the remedy (e.g., timelines to implement a reinstatement of an employee)

The arbitrator's decision is final and binding on the parties. While appeals are possible, they are not usually permitted unless there is an allegation and evidence of arbitrator bias, procedural error, concerns about a decision made outside of jurisdiction, or a misinterpretation or misunderstanding of the collective agreement. Appeals are rare and often unsuccessful when accepted. Disagreement with the arbitrator's decision or remedy is not grounds for an appeal.

Challenges With Arbitration

While arbitration does result in a final decision on a disagreement

that management and the union could not resolve on their own, it has several challenges. Scheduling an arbitration involves hiring lawyers and arbitrators who do specialized work and are often in high demand. Simply getting a date to begin an arbitration can be challenging. In many cases, arbitration will not start for months and possibly more than a year after the grievance process is exhausted. This means an employee who has been terminated or disciplined is waiting that long before they know their fate. Arbitration is also very legal and formal, making it expensive and complex.

According to McQuarrie (2015), arbitration was meant to be a less formal process to resolve disputes, where the union and management would represent themselves to a neutral third party who would decide on a matter. Adding lawyers to argue cases and incorporating past decisions has made the process more rigorous, costly, and uncomfortable for employees who may be hesitant to appear as witnesses. Arbitration may also be out of reach for some employers and unions due to the cost, as a single hearing could cost one party tens of thousands of dollars.

The following video highlights some challenges and possible solutions to these problems.

One or more interactive elements has been excluded from this version of the text. You can view them online here: https://lrincanada.pressbooks.tru.ca/?p=106#oembed-2

Source: Canadian HR Reporter. (2011, May 9). *Grievance arbitration: Current standards and how to improve the system* [Video]. YouTube. https://youtu.be/_n3WTrWeP70?si=z28B1DZ5zORX4qUg

If you are using a printed copy, you can scan the QR code with your digital device to go directly to the video: Grievance arbitration: Current standards and how to improve the system

Alternatives to Arbitration

One of the primary benefits of arbitration is that it results in a final decision. However, given the challenges and constraints either party might face in accessing arbitration, it may not be the best way forward. In Canada, the labour relations board (LRB) in each jurisdiction provides alternatives to grievance arbitration that may include mediation, expedited arbitration, and mediated arbitration. Not all jurisdictions provide all three options, but we will discuss each and their benefits and downsides. These options are usually only available if the parties have not yet started a traditional arbitration process.

Mediation

Mediation is an alternative to arbitration in resolving grievances, particularly when both parties seek a less formal, more collaborative approach. In most jurisdictions, mediation involves a mediator or "settlement officer," who can be requested through the labour relations board (LRB). In some jurisdictions, there is no cost to the parties when the LRB assigns the mediator. Unlike arbitration, where a binding decision is imposed, mediation focuses on assisting both parties to reach a mutually acceptable resolution, often meeting within five to 10 days to expedite the process. The mediator meets separately and jointly with both sides to facilitate communication, clarify issues, and explore potential compromises. Although the process may result in a signed agreement, the mediator does not issue a binding award, allowing both parties to retain control over the outcome.

Mediation's emphasis on collaboration makes it an effective method for resolving disputes without the potential adversarial effects of arbitration. This approach is also timely, cost-effective, confidential,

informal, and collaborative, making it a preferred option for many. However, it does require both the union and management to engage in open dialogue and to be willing to consider alternatives.

According to the Saskatchewan Labour Relations Board, the reasons listed below might make mediation a good alternative.

Saskatchewan Labour Relations Board Mediation Benefits

There are several reasons why employers and unions may want to consider grievance mediation:

- Attitudes – Grievance mediation is designed to alleviate the build-up of negative attitudes which can develop when conflict goes unresolved.
- Control – Grievance mediation allows the parties to shape a settlement. If the grievance goes to arbitration, a settlement will be imposed.
- Cost – Arbitration can be an expensive process. A grievance mediator is assigned without cost for their services.
- Time – Grievance mediation is designed for resolving disputes as quickly as possible. Time delays can lead to serious morale and personnel problems.

Source: Government of Saskatchewan. (n.d.). *Conciliation and mediation services*. Retrieved November 4, 2024, from https://www.saskatchewan.ca/business/hire-train-and-manage-employees/collective-bargaining-and-mediation/conciliation-and-mediation © 2023, Government of Saskatchewan.

Expedited Arbitration

Some jurisdictions also offer expedited arbitration, which is another alternative for resolving grievances. The primary benefit of this method is that it happens more quickly than traditional arbitration. This happens partly because the parties will request an expedited process through the labour relations board (LRB), which assigns the arbitrator to the case based on their availability to proceed. The process is designed for specific, fact-based issues, such as minor disciplinary disputes, allowing the arbitrator to meet with the parties promptly and reach a decision in a shorter time frame. According to McQuarrie (2015), this might not always hold, as the parties might agree to expedited arbitration for all disciplinary matters. Still, it will not be used for issues involving the interpretation of collective agreements, as might be the case with a policy grievance.

Expedited arbitration is less formal and less costly than traditional arbitration, as it avoids many of the legal formalities associated with standard proceedings. Additionally, outcomes from expedited arbitration are non-precedent setting, meaning they apply only to the specific case at hand and do not influence future cases. This approach offers a swift resolution without the potential complications of a lengthy legal process. For example, in British Columbia, an expedited arbitration must conclude within 90 days of the application to the LRB, and the arbitrator must render their decision within 30 days of the hearing concluding (British Columbia Labour Relations Board, 2023b).

Mediated Arbitration

Mediated arbitration is a hybrid dispute resolution approach that combines elements of mediation and arbitration, though it is less

commonly used and unavailable in all jurisdictions. The process begins with the arbitrator acting as a mediator or settlement officer, aiming to facilitate a mutually agreeable resolution through an informal, collaborative process. The goal at this stage is to reach a settlement without needing a formal arbitration hearing. However, if mediation efforts are unsuccessful, the mediator transitions into the role of arbitrator, proceeding to hear the case more formally and ultimately rendering a binding decision. This method leverages the flexibility of mediation with the finality of arbitration, allowing for a streamlined resolution process that can adapt to the dynamics of the dispute.

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What Type of Grievance Exercise Answers

1. Group grievance as it affects one team.
2. Individual grievance as the action only impacts one employee.
3. Union or policy grievance as the employers actions potentially affect all employees.

Version History

This page provides a record of changes made to this learning resource, Labour Relations in Canada. Each update increases the version number by 0.1. The most recent version is reflected in the exported files for this resource.

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Version	Date	Change	Details