

Industrial Relations Final Notes

Week 6

The Emerging Labour Movement – 1860's - 1910

- **Labour Movement:** A general term for the collective organization of working people and their organizations that evolved to campaign for improved terms and conditions at work and to contest and challenge various aspects of advanced capitalist society, particularly with regard to social relations of work

Industrial Revolution

- The (First) Industrial Revolution was the transition to new manufacturing processes in the period from about 1760 to mid-1800s
- Before the industrial revolution, people lived on farms or in villages, most work was done by family in the home – each family produced just enough to meet their needs
- Changes in technology and agriculture led to mass production and large scale farming, construction of railways and canals
- Moving from hand production methods to machines, new chemical manufacturing and iron production processes, use of steam power, machine tools, rise of factory system (textiles, steam power, iron)
- Rapid economic growth after the 1870s ---- Second Industrial Revolution (focused on steel, railroads, petroleum, chemicals, electricity)
- People being pushed to cities – slums, dangerous working conditions in factories

Craft Unionism

- Before the industrial revolution began in Canada until about 1850, Canada was still pre industrial

Master craftsman: a craftworker who has attained the highest level of aptitude

Apprentice: a worker who is learning a trade of craft under the guidance and supervision of a senior skilled worker in the field

Journeyman: a worker who has completed an official apprenticeship in a craft or skill and who is thus qualified to work in that field under the supervision of a master craftsman

Craft union: a union that organized workers according to their particular skill or trade (such as bricklayers and carpenters) rather than according to industry. Craft unions first emerged in Canada in the early to mid 19th Century. See also *industrial union*

How do unions effect business outcomes

Unions effects on a companies productivity and profits

- In industries with a unionized and non-unionized workplaces, it would seem that the latter (non-unionized) would have an advantage
- This is due to the fact that
- However it can be possible that unions create less turnover, higher job security, and greater employee morale, improving productivity and therefore profits
- **Shock Effect** – a concept that describes how managers respond to unionization, and the ability of unions to enforce rules and raise labour costs, by professionalizing their human resource management practices to reduce risk and find efficiencies and thereby improve productivity

- **Productivity and Profits**
 - Argument against unionized workplace: greater labour costs, inflexible workplace rules, reduced ability to attract capital investment, depressed sales levels (could lead to lower profits)
 - Argument *for* unionized workplace: lower rates of turnover, greater job security, higher employee morale (increase in productivity could negate any disadvantage related to profits)
- **Employment**
 - Unions could increase employment growth (opportunity for ‘voice’ means more workers airing grievances, increases productivity by reducing turnover, enhances incentives to invest in training, improving communication flows, increasing morale)
- **Business Innovation**
 - Innovation may be restricted in a unionized setting
 - With a more formal relationship between workers and managers, it is likely that collaboration between workers in different job areas and collaboration between workers and managers may be more limited making product innovation less probable
 - Workers and managers may be more inclined to view goals as distinct from eachother
 - Unions may persue their goals by appropriating limited desire or goodwill to innovate
 - On the other hand, unions may also promote innovation
 - Strong preference of unions for seniority based pay (as opposed to merit based) may encourage higher risk behaviors associated with innovation
 - Because union members usually enjoy a wage premium, greater firm specific loyalty may result, and workers may be more inclined to make contributions towards innovation

- 3. *Unfair labour practices* prohibited
 - e.g. can't fire union supporters
 - e.g. can't threaten to close if unionized

Exclusive bargaining agent

- The union becomes the “exclusive bargaining agent” of all bargaining unit employees
- Bargaining unit employees can not have more than one union representing them
- Requirement – start bargaining a ‘collective agreement’ (one side usually gives ‘notice to bargain’ to other)
- **It's in the interest of HR to respect and spend time building a relationship with that bargaining agent – elected by workers to be the voice of workers**

Bargaining in “good faith”

- Legal *duty to bargain in good faith* – applies to both sides throughout process
- Two components to duty
 - Enter into *honest* bargaining, avoid dishonesty (e.g. concealing plan to close operation)
 - Must bargain with *intention to reach* a collective agreement
- Does not mean no hard bargaining!
 - NOT a duty to ‘give in’ or agree to so-called ‘reasonable terms’
- But, cannot act with intention of avoiding reach an agreement
- Enforcement: complaint-driven (to OLRB)
- Often hard for OLRB to decide
 - Where to draw the line between surface bargaining (illegal) and hard bargaining (legal)?
- Remedies
 - Principle – avoid excessive interference, while still trying to repair “damage”
 - E.g. direct one side to alter their behaviour, withdraw specific demands, etc.
- First Contract Arbitration – may be open access or only as remedy to proven ‘bad faith bargaining’ (ensures union gets at least one first agreement, get relationship on its feet)
- Examples of violations of duty to bargain in good faith
 - Outright refusal to bargain, refusal to meet
 - Surface bargaining
 - Boulwarism
 - Failure to disclose significant plans affecting BU
 - Direct bargaining
 - Undermining/avoiding union support during bargaining (e.g. fire or discipline union supporters during bargaining without legitimate business reason)
 - “Reneging”
 - “Freeze” violation
- This is also an ‘unfair labour practice’

Week 8

- Example: Mutual gains through writing lyrics and composing music to produce a top hit
- Distributive: Ultimatum game. You have \$10 to share. There is a proposer and a respondent. If the respondent agrees to the split, that's what each side gets. If the respondent says no, neither side gets anything. Knowing that the other party will want to gain at least something, the proposer is more likely to make slightly lopsided offers (e.g. 6:4, 7:3). If the offer has too much of a gap (e.g. 9:1 or 8:2), the other party is likely to feel offended in some way and refuse the offer outright, leaving neither party with anything. The perfectly altruistic proposer might set a string of offers at 5:5 but this is seldom the case when there is such a wide open opportunity for tilting the scale in one's favour.
- Sometimes it might seem distributive but may not necessarily be so. i.e. budget cuts and employers need to eliminate some jobs
- Integrative: Example of friends in Yellowknife where there were lots of job cuts in environmental branches of the CDN government. Rather than trying to compete with others to make a case for why their positions should be kept, a bunch of them got together and agreed to shorter hours so that no one would have to lose their job. Now, they work 9 months out of the year with their reduced paycheck spread out over 12 months. In turn, they have got to travel, spend more time with family, and generally lead a more relaxed and healthy lifestyle.

BATNA

- Best Alternative To a Negotiated Agreement
 - Major source of power in a negotiation
 - If you can say 'no' and walk away without a deal because your alternative is more attractive, this leverages your bargaining power
 - Can manipulate the other party's perception of your BATNA to get them to agree
 - Examples: 'The used car' or having one vs. multiple job offers
- What is a situation where a party has a weak BATNA? e.g. no hockey season = likely that parties will continue to try to reach an agreement
- What is a situation where a party has a strong BATNA? e.g. two other job offers = candidate has bargaining power; likely that prospective employer will make an appealing offer
- (unless the employer has 3 other strong candidates who are willing to take much less money...then the original candidate's BATNA is not as powerful over the employer anymore).

2. Engaging in Mutual Adjustment

- Negotiations begin with opening positions
- Proceed by suggesting alterations to the other's proposal
- Also making changes to own position
- Back and forth towards a common range
 - Target points

Grievance: A formal complaint lodged under a collective agreement that alleges a contravention of the collective agreement

- commences a legal process detailed in the collective agreements grievance procedure. The objective of the grievance procedure is to explore the possibility of resolving the dispute without litigation

Why Grievance Arbitration?

- Advantages:
 - An equitable, relatively inexpensive and expeditious solution to contract disputes; i.e. faster and cheaper than the regular legal system.
 - Provide employees with “voice” in matters that affect their employment.
 - An important benefit of unionization
- Disadvantages:
 - Process is still slow, expensive and overly “legalistic”.

Types of Grievance

- **Individual grievance:** A grievance filed by an individual employee alleging that their collective agreement rights have been violated by the employer
 - Relates to a single bargaining unit member – Most common
 - **Grievor:** an employee who files a grievance
- **Group grievance:** a grievance filed on behalf of two or more employees who allege the same or similar breach of the collective agreement
 - Several similar individual grievances ‘grouped’ together to be heard & decided together
- **Policy grievance:** agreements files by a union that raises an issue [or issues] that is of general interest to all or many employees in the bargaining unit
 - General application or policy question under the collective agreement, eg. tech change, pay equity, challenge to absenteeism control policy
- **Employer grievance:** a grievance filed by an employer alleging that an employee or the union has violated the collective agreement

Steps in Grievance Procedure

- Usually a three or four step process:
 - • Step 1: Oral presentation to supervisor (usually with shop steward)
 - • Step 2: Written presentation to Director of IR
 - • Step 3: Presentation to Plant manager
 - • Step 4: Presentation to Arbitrator
- only 2% or 3 % of the cases reach this stage

Settling or withdrawing a grievance

most grievances are settled or withdrawn open [dropped] either during the grievance procedure or at the outset of the arbitration hearing

- Seniority
- Disciplinary Record
- Correction, Rehabilitation and Deterrence
- Provocation
- Employee's State of Mind
- Admission of Misconduct
- Personal Circumstances
- Consistency of Discipline
- Condonation

Principle of "Estoppel"

- If the union relies on an employer's past practice to their (i.e., the employers) detriment in negotiations, then the employer is prohibited (i.e. "estopped") from changing the practice until the next set of negotiations.
- E.g. CP Rail voluntarily paying an isolation allowance to employees working in remote locations, even though not required to do so by the collective agreement.
 - – Employer prohibited from terminating this practice during the term of the collective agreement.

Week 11

The Public Sector

- The **public sector** is the part of the economy concerned with providing various government services. Can include such services as the military, police, public transit, care of public roads, public education, healthcare, and those working for the government itself, such as elected officials
- The public sector might provide services that a non-payer cannot be excluded from (such as street lighting), services which benefit all of society rather than just the individual who uses the service

Importance of the Public Sector

- Labour market significance
 - Large fraction of Canadian workforce (approximately 20.6% in Canada as of 2012; 19.6% in Ontario only)
 - Higher union density than private sector.
 - Restructuring of public sector has implications for labour market / union movement.
- Gender & equality issues
 - High proportion of women in public sector.
 - Especially in the education and health sectors.
 - Public sector took the lead in pursuing equity / benefits for women.

How The Charter Has Influenced The Law Of Work In Canada

In addition to Section 1, the two sections of the charter that are most important to the law of work are Section 2 [fundamental freedoms], and section 15 [equality rights]

the sections of the charter that are most important to the law of work

- guarantee of rights and freedoms
 1. The Canadian charter of rights and freedoms guarantees the rights and freedom set out in its subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and Democratic society
- fundamental freedoms
 2. everyone has the following fundamental freedoms
 - a. freedom of conscience and religion
 - b. freedom of the thought, belief, opinion and expression, including freedom of the press and other media of communication
 - c. freedom of peaceful assembly
 - d. freedom of Association
- mobility rights
 - 6(1) Every citizen of Canada has the right to enter, remain in and leave Canada.
 - (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
 - a) to move in to take up residence in any province
 - b) to pursue the gaining of livelihood in any province
- equality rights
 - 15 (1) every individual is equal before and under the law and has the right of 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
 - (2) subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantage individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age mental or physical disability

The charter in the common law regime of work law

- due to the fact that the charter only regulates government action, the charter has played a limited role in the development of the common law of employment.
- While the charter was never intended to have a substantial impact on the common law regime, it was expected to influence the development of the regulatory standards regime

Enumerated and analogous grounds

- **enumerated grounds:** the personal characteristics that are expressly listed in section 15 (1) of the Canadian charter of rights and freedoms, namely race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability