

# Is Unfair Treatment an Unfair Labour Practice?



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Not all employers are happy to have their employees represented by a union. Sometimes there is a sense of uncertainty among members as to how involved they should get with the union. It is important that union members become actively involved in their union. The more members get involved and are vocal about asking questions and asserting their rights, the stronger the union. Employers prefer quiet employees who do what they are told, don't complain and work hard. There is nothing wrong with a good hard day's work. There is something wrong however, with not asking questions when you feel that you are not being treated fairly. Chances are, if the employer is treating you unfairly, they are doing the same thing to everyone else.

Union representatives in the local workplace can be a very useful resource for other members. They can help advocate for and inform members on issues they may find too big to deal with alone. This empowerment can cause employers to take a jaundiced view of union representatives in the workplace. Union representatives and vocal union members can sometimes become targets of an insecure employer. When action is taken by employers or their representatives against a union member because of their membership in the union, the employee must be able to protect herself. There are rules under the Collective Agreement and the law of Manitoba that may help. The employer is prohibited from taking punitive action against a union or its members because they are engaged in legitimate union activity. But what kind of action by the employer is it exactly that is prohibited? This article will attempt to answer that question.

Sometimes the employer will force one employee to be rigidly aware of and adhere to the time that she starts and completes her shift. If she is even a little late a disciplinary meeting is convened. With other employees the employer may take a more relaxed approach. Is this an unfair labour practice?

Some employees may find it easy to access support for education funding from the employer while others are restricted. Some employees seem to be favoured with the shift schedule of their choice, others not. Some may find it easy to get time off to deal with personal matters, others not. Some employees may be selected to sign time verification sheets each

pay period, others not.

Any one of these actions could amount to an unfair labour practice. Conversely, each of these practices may have a reasonable explanation that would disqualify it as an unfair labour practice. The determination in each case has to be made as to whether the employer is demonstrating anti union animus with its actions.

On the issue of fairness, most of the MAHCP Collective Agreements across the Province have the following provisions in place:

402 The Employer agrees to exercise its management rights and to administer the terms of this Agreement in a consistent, equitable and non-discriminatory manner.

2601 It is agreed that there shall be no discrimination, interference, restriction, harassment, or coercion knowingly exercised or practised by the Employer or any employee by reason of age, religion, race, colour, national origin, political or religious affiliation, sex, marital status, place of residence, family relationships, physical handicap nor by reason of her membership or non-membership or activity in the union.

2603 No form of employee abuse will be condoned in the workplace. The parties will work together in resolving such problems as they arise. When such situations arise, employees will report them as soon as possible. Any employee who believes a situation may become or has become abusive shall report this to the immediate supervisor. The Employer shall notify the Association as soon as possible after the receipt of the report. Every reasonable effort will be made to rectify the abusive situation to the mutual satisfaction for the parties. Situations involving abuse shall be treated in a confidential manner by the Employer, the Association and the employee(s).

Article 402 provides that the employer must administer the terms of the agreement fairly. Forcing the grievor to be punctual and no-one else is not fair. Forcing employees to be punctual is not unfair. If the union were to grieve the unfairness in this circumstance a resolution would likely force the employer

to be cognizant of and enforce all employees' punctuality.

Article 2301 and 2303 protect the employee from abuse and detrimental treatment as a result of discrimination, one of the grounds being union membership. The union can grieve unfair treatment if the treatment falls specifically under these two provisions and if the treatment is just generally unfair, a grievance under 402 may apply.

If the Collective Agreement is not of any help the legislation governing the labour environment in Manitoba may. The Labour Relations Act provides:

6(1) Subject to subsection 32(1), every employer or employers' organization, and every person acting on behalf of an employer or an employers' organization, who participates in, or interferes with, the formation, selection, or administration of a union, or the representation of employees by a union that is the bargaining agent for the employees, or contributes financial or other support to a union, commits an unfair labour practice.

And

#### **Unfair labour practice by employer**

17 Every employer and every person acting on behalf of an employer

- (b) who seeks by intimidation, by coercion, by threat of dismissal or any other kind of threat, or by the imposition of a pecuniary or other penalty, or by a promise, or by a wage increase, or by altering any other term or condition of employment, or by any other means, to compel or induce any person
- (i) to refrain from becoming, or to cease to be, a member or officer or representative of a union, or
  - (ii) to refrain from exercising any of the person's rights under this Act, or
  - (iii) to refrain from testifying or otherwise participating in a proceeding under this Act or any other Act of the Legislature or of Parliament, or
  - (iv) to refrain from making a disclosure that he may be required to make under this Act or any other Act of the Legislature or of Parliament, or
  - (v) to refrain from making an application or filing a complaint under this Act or any other Act of the Legislature or of Parliament;
- commits an unfair labour practice.

Section 6 of the Act usually will not apply to actions of an employer against an employee but

rather where the actions of the employer affect an interference with bargaining rights of the union.

Section 17 is the clause that governs the employer's punitive actions against an individual employee because of their union position or activity in the workplace. The employee must show that the actions of the employer constitute intimidation or a threat so as to dissuade the employee from asserting their rights under the collective bargaining agreement or from union membership.



The Labour Board has set a high threshold for an employee to prove that the impugned behaviour constitutes an unfair labour practice. In order for an employer to be found guilty of an unfair labour practice under section 17 unless there was some evidence that the employer has said or written something to demonstrate the intent to intimidate the employee for their union related conduct. The employer's management style alone, even if it seems harsh, is insufficient to show anti union intent.

Asserting your rights under the agreement and pursuing membership in the union makes the union stronger. It is a course of conduct that is to be protected not punished. The reality is that union representatives and vocal union members can sometimes become targets of an insecure employer. Knowing that this conduct is wrong and seeking help to protect yourself if such a situation arises will help you and other members in the workplace continue to have a strong voice in healthcare field in Manitoba.

*This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.*

**This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Wendy at 772-0425.**