

# Why Union?



Jacob Giesbrecht  
Inkster Christie Hughes,  
LLP

Most healthcare professionals have the benefit of union membership throughout their careers. This provides a basic level of support that isn't always appreciated in the ever increasing anti-union environment in Canada and the rest of North America. Free market enterprise appears to be a rallying cry heard farther and louder than ever before. This article will feature a few true to life examples of the employees caught up in that free market without the benefit of support from a union in times of need:

- *The sales representative who just didn't "have it anymore".*
- *The dispatcher's position that was suddenly better suited to the boss's family.*
- *The machinist who insisted on doing things the right way.*
- *An aging waitress struggling to overcome the physical demands of the job.*
- *The warehouseman who cost too much.*

The sales rep sits in a lawyer's office wringing his hands. He speaks effusively at first, telling his story with flare and vigour. He tells of past glories, multi-million dollar sales, leading sales teams, making lots and lots of money for his employer. Then as he gets closer to the end he speaks more slowly, head down; the energy seeping out of him to reveal every hard earned wrinkle of his 55 years. He almost whispered the final act, "They said I just don't have it anymore".

Even though the fired sales representative was still earning money for his employer of 18 years, they had decided to replace him with a younger sexier model. One that better fitted the corporate philosophy. Through no fault of his own and without warning they issued him a termination letter and proposed a settlement and said "take this to your lawyer and let us know your position." "Don't take it personally".

He had always loved his job and did it well. He had not saved for retirement, had intended to work for years to come. There was

no amount of money that could repay him for what he had lost. There was however no law that could force the company to keep him, all that the law requires when an employer decides to terminate a non-unionized employee is that (s)he be paid in lieu of notice. Without a union contract, any employer can tell any employee that "you just don't have it anymore; we're going to let you go." They can either pay for a period of notice or allow the employee working notice and she gets nothing when the termination date arrives.

There's another story of an ex-truck driver who tired of the road and took a job as dispatcher for a trucking company. The pay wasn't so great but at least he could go home every night to be with his family. He enjoyed that job until one day his manager decided, for reasons he never revealed to the dispatcher, to move him to the nightshift. Coincidentally, the dispatcher's day shift was given to the manager's relative.

The dispatcher did not want to work the night shift. That would again take him away from his family during the week. The dispatcher was told either take the night shift or find another job. He consulted with a lawyer. The common law rule in a situation like this, where there is no union or written contract, you can sue for constructive dismissal but the court won't give you the job back, they may pay you a severance amount but by the time you pay your lawyer, you may have a few dollars left over and you won't have a job.

There was a talented machinist who dabbled with inventions. He worked for years dedicating long hours without overtime pay to create the best possible parts required by his employer's customers. He took great pride in his work. On top of just producing the parts that he was hired to produce, he invented and built the machines that could be used to produce more parts in exact fashion. He was a tireless perfectionist. The employer eventually grew tired of the delays caused by this perfectionist and fired him. Another more sloppy but faster machinist was hired to replace the old hand.

The old machinist sued his former employer and received a small sum for payment in lieu of notice of dismissal but was

*continued on page 13*

*continued from page 12*

not awarded anything for the thousands of dollars in machinery created for the employer. The court determined after the fact that his inventiveness was simply part of the employment duties, what he owed to the employer as part of his unwritten employment contract.

There was a waitress who came into work cheerfully early in the morning for many years and ran herself ragged on behalf of her employer. Eventually she grew too weak to carry around giant trays of heavy food. She was summarily dismissed for no apparent cause, just not working out after 20 years of service. No pension, no benefits...a few thousand dollars as a parting gift.

A warehouseman of 30 years replaced with a younger, stronger cheaper man. He sued his employer and fought for years to force a severance payment only to have most of that ultimately go to pay the legal fees incurred in the long struggle. The employer likely paid twice as much in legal fees than he ended up paying in damages to his former employee. Without the job the warehouseman had to sell his house because he couldn't keep up with the mortgage payments.



In all of these cases a union could have played an integral part in maintaining that primary right every employee should have; the right not to be terminated through no fault of their own. A union helps to level the playing field. Where the employer fires an employee without cause, the union pays the legal fees

involved with an arbitration to fight the unjust dismissal. The arbitral process, although it sometimes seems slow, is light years faster than the court process.

With the ever decreasing union representation we see in North America, it may be that in the near future, the stories of those left to their own resources when terminated by their employers will sound something like this:

- ***The x-ray tech slowed down by repetitive strain.***
- ***The lab tech with severe allergic reaction to chemicals.***
- ***The pharmacist with impaired vision.***
- ***An aging general duty technologist taking too much sick time.***

Why union you ask? Because it leaves all employees less vulnerable to the whims and injustices of the free market system in which we live.

*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.