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Defending our Rights and our Collective Agreements - Do We Have a Choice?

by Wayne Peters, UPEIFA President

Our calendars tell us that just one year ago the membership of the UPEIFA BU #1 united in wonderful solidarity to achieve a negotiated collective agreement with our employer. I am referring, of course, to the Union's sixteen day strike which was taken to solidify the message to our employer that our interests were important ones which could not be ignored. During that short period of time in the early spring of 2006, we successfully sacrificed for significant improvements to our long-term working conditions at UPEI, which will ultimately benefit the entire UPEI community and our Island community beyond.

Coming out of this effort was one of our two collective agreements - the most important document for each of our working lives at UPEI. While bargaining teams work intensively, and under the close scrutiny of the membership, for relatively short periods of time to achieve a collective agreement, the effort to defend its content and to ensure that it is respected by the employer takes place mostly behind the scenes, day in and day out throughout the year.

A collective agreement sets out the mutually agreed upon terms and conditions of the working relationship between the employer and its employees and establishes the rights of all employees. It is a legally binding and recognized contract which covers all aspects of the working relationship with the employer. It is the most powerful tool we have when it comes to defending our rights and protecting us from unfair treatment in the workplace.

I am not simply stating the Association's opinion when I say this. Over time, the collective agreement and its powers and procedures have been purposely established by legislation and common law to manage the employer/employee relationship in the unionized workplace. In earlier days, the strike was the only recourse a union had to deal with an employer's transgression of the collective agreement. As the legal-status of unions and collective agreements evolved, however, it became recognized that the strike was not the best tool for this purpose and has since been reserved as an instrument for achieving an agreement in the first place.

Alternatively, the general policy established in Canada, and elsewhere, has been that disputes which might arise over the interpretation, application, or administration of the terms of a collective agreement are better resolved without the work stoppage of a strike. As a result, grievance and arbitration procedures were established for this exact purpose. The Province's Labour Act requires that there be language for such procedures in any legal collective agreement. So, it is the case that our Collective Agreements, through their Grievance and Arbitration language, are the most powerful tools we have when it comes to defending our individual and collective rights in the workplace.

This, of course, brings me to a discussion of the Union's grievance activity. Since its inception, the Faculty Association has filed about two dozen grievances on behalf of itself and individual members. Presently, most of these remain unresolved but are working their way through various stages of the

procedures. The resolution of these requires the expenditure of a considerable amount of resources, by both the Association and the University, measured in terms of time, effort and money. The question which may be on some minds is whether or not it is necessary for the Union to file grievances to resolve issues with our employer. The more important question on my mind is *"Do we have a choice?"*

From a legal perspective, the answer is clear. The filing of a grievance is the only means recognized by legislation and the courts for the purpose of settling a dispute between a union and the employer. In fact, our two collective agreements require that disputes be settled in accordance with their Grievance and Arbitration procedures. However, is there room for more informal discussion in response to an issue between the parties which could preclude the filing of a grievance or the need for an arbitration hearing? Absolutely! Our agreements encourage the informal settlement of issues through discussion. This delicate process, though, is governed by things more complicated than contract language and procedures. It requires a tradition of respect, trust, communication and collegial discussion between the parties. It is a desirable relationship but often not a realistic one. Without it, the procedures of any collective agreement must prevail.

It is important, though, to understand certain roles of the parties which come to them, I believe, by default of their positions in the workplace. While the union and the employer are equal partners in negotiating a signed collective agreement, this relationship changes somewhat when it comes to the agreement's application. Ultimately, our Employer is the administrator and manager of our Agreements. It alone is in the best position to ensure that their provisions are being followed. I believe that our Employer has a legal and moral responsibility and obligation to live up to its commitments under our Collective Agreements.

On the other hand, your Union does not administer the Agreements in the same sense as the Employer. While a recent arbitration ruling for an association grievance states that unions are under no obligation "to take affirmative action to find out how the Employer is actually administering the Collective Agreement", the reality is that the Association spends considerable time following up on information which suggests that our Employer is not always fulfilling its obligations. Far too often, the Association is in the unfair position of having to react to unilateral actions taken by our Employer which impacts the Collective Agreements and which were taken without any previous consultation or discussion with the Association in a "fait accompli" manner. In most of these instances, the Association has filed a grievance.

In many cases, though, collegial discussion in advance of taking action could have precluded the grievance from being filed. Unfortunately, the Association is not in a position to initiate such discussions before an action is taken if it is unaware of the Employer's intentions. Only the Employer can do this. The Association is left then to react to our employer's actions. In my opinion, our employer has an obligation to engage the Association in collegial discussions whenever actions it would like to take might have implications for either of our Collective Agreements.

When it comes to defending our Collective Agreements, though, every issue which challenges them is a critical one. We do not get to pick and choose when we defend the Agreements since it is commonly accepted that we only have the rights which we are willing to defend. This is particularly

true of legal agreements like collective agreements. We must be willing to defend the entire agreement. If an employer is allowed to sidestep any commitments made at the bargaining table, the integrity of the entire collective agreement is seriously undermined. It is all too easy for an employer to point the finger at *'extenuating circumstances'* as an excuse for failing to follow the agreement.

While I would certainly prefer a more collegial consideration of our Agreements and the issues that arise from its application, unfortunately, our Employer seems to prefer more unilateral decisions and actions. Until such time that this changes, the filing of grievances seems to be our only recourse. In short, we do not have a choice.