Changing Workplaces Review Presentation
Geoffrey L. Hudson, D.Phil. (Oxon)
Northern Ontario School of Medicine Faculty and Staff Association
Thunder Bay, 16 September 2015

Good Afternoon

My name is Geoffrey Hudson, I am an Associate Professor in the Human Sciences Division at the Northern Ontario School of Medicine, which is the faculty of medicine for Lakehead and Laurentian Universities.

I am a Member of the Northern Ontario School of Medicine Faculty and Staff Association, founded ten years ago, which includes a faculty bargaining unit which joined OPSEU in 2008. A support staff unit joined thereafter. We also represent part time faculty on a non union basis.

I am the Chief Negotiator for the School's Faculty Unit, which represents full time faculty, professional librarians, and professional staff such as curriculum designers and learner affairs officers. As such I sit on the Collective Bargaining Committee for the Ontario Confederation of University Faculty Associations.

In addition I am my Union's delegate to the Thunder Bay and District Labour Council, and sat on its Executive last year.

As a fairly new association and union I will be speaking to concerns related to a recommendation concerning certification and first contract negotiations made by the OCUFA President, Kate Lawson when she spoke in Toronto on June 16. I have seen the other presentations made by colleagues at other faculty associations and know that they have for the most part focused on issues related to precarious work, and so I will not be addressing that in my presentation.

University faculty are part of the broader labour movement, and although we are a heavily organized sector, we see the need for labour law improvements to enable all Ontario employees who are not presently unionized to decide for themselves if they wish to organize.

Specifically, I argue that the Labour Relations Act needs to be improved to enhance worker rights to organize and achieve a first collective agreement.

- It needs to reintroduce **card--based certification for all workers**

- There needs to be improvements in **first contract arbitration provisions**

With respect to organizing, I have a couple of stories. I was the full time organizer on the McMaster contract faculty drive in 1988. As the full time organizer I recruited and trained a local organizing committee of 20 card signers, created informative materials, and talked to a wide variety of potential members. Before we began we created an accurate list. In six weeks we approached all the contract faculty, spoke with them one on one, and exceeded the then necessary 55% threshold of cards signed. Automatic certification. We had a pamphlet on the union, a chart comparing terms and conditions with organized contract faculty elsewhere, answered questions. One prospective

card signer demanded to meet our business agent. No problem. Some needed more than one meeting. No problem. One fellow signed after three meetings with me admitting that seeing "Norma Rae" the night before was a factor.

In achieving automatic certification we were part of a long term trend. Dan Keon in that year – 1988 - published a paper at Queen's commenting that

> "...the labour movement continued to have an automatic certification rate in the period of 1976-1986 of between 86% and 89%... An automatic certification, which is granted when more than 55% of the bargaining unit has been signed up as union members, is a clear sign of a well-conducted and highly successful union organizing campaign."[1]

Our success with the contract faculty at McMaster was aided by the fact that the Employer did not find out about the organizing drive until it was almost over. The contract faculty were able to make their own minds up about whether to join or not without the interference of the Employer, during card signing, or during a subsequent ballot.

In this regard I concur with the statement in 1981 by the Canadian Labour Relations Board that [and I quote]

> "Any involvement by the employer in the exercise by the employee of his/her basic right to join a union puts unfair pressure on the employee. An employee joining a union must not be put in a situation of second class citizen who is adhering to a secret society and being ashamed of it. Either the right is recognized or it is not: if it is, it must be exercised in full light and without fear."[2]

John Godard in a recent article on Canadian labour history has commented that

> "a key feature of Canadian labour law has been stronger presumption than in the US that the employee is in a subordinate position to the employer and is susceptible to intimidation, the result being that the decision to join a union has been seen as the employee's alone ....."[3]

When I joined the medical school in 2004 I was asked by my colleagues to take the lead on the organization of our faculty association, which was challenging given we have two main campuses 1000 KM apart. We created an independent faculty association and well over 60% signed cards to unionize. Given the changes in the law (since the last time I was an organizer in 1988) we were then also required to go through a vote process. Given that so many had signed cards many expressed surprise that a vote was needed. Had they not already agreed? They had thought about it carefully and signed a card to join. The posted forms and processes seemed bizarre. The vote delayed things, it was time consuming, it was viewed as completely unnecessary. They had already said yes. It brought the wisdom of the labour law of Ontario into question. Since then colleagues talk about this process as one in which they had to vote twice.

Prior to 1977 every province accepted card-check ratification. As you know some provinces have since instituted mandatory ballots as well, with some going back to card check.

Some have objected to the return to card check. For example Peter Shawn Taylor in 'Canadian Business' (April 12, 2013) argued that "Employers prefer balloting because it offers them a chance to make their case to workers during the voting period."

With mandatory balloting we have the same situation as the USA in which lawyers and other consultants profit by trying to discourage workers during the ballot from joining unions and engaging in collective bargaining, considered a fundamental human right in both Canada and under international human rights law.

You may have seen the Walmart Labor Relations Training slide deck which is available online, Salaried Manager Module, in which their managers are told that it is legal to share your personal opinion and experiences about Unions. And then the managers are told what their personal opinions are:

> "For a Walmart associate, I think unions are a waste of money. You can speak for yourself". "In my opinion, unions just want to hurt Walmart and make it harder to run our business", "I don't need a union at this Walmart or any other Walmart. I think the Open Door is a great way to deal with concerns". "I think Unions have done a lousy job representing workers..."[4]

Some Ontario law firms now have a practice area called "Union Avoidance". Stringer in Toronto for example advertises online that they can "assist employers in planning communication strategies that present the case to employees to remain union free, but do not go over the legal line".[5]

Employees should have the chance to decide to join a Union without Employer involvement.

Card check provides that opportunity.

With respect to first contract arbitration we need to improve labour law so that either party can demand it. This will support workers in reaching fair first agreements. It also helps to create stability and positive relations at an early stage between the parties. At our medical school the support staff unionized in 2009, started negotiations in September that year, and in mid-August 2010 went on strike. They did not come back to work until mid-November. It was the longest university strike in Canadian history, in part because first contact arbitration was not there creating an incentive to achieve a first agreement without a work stoppage. The strike caused serious disruption during a critical period of our early development as a medical school. It also created long lasting, negative, labour relations. If the labour law in this province could be changed to provide again for first contact arbitration on demand along the lines recommended by OCUFA and the OFL it would be a very positive development.

Thank you for your consideration of my remarks.

---

[1] Dan Keon in "Union Organizing Activity in Ontario, 1970-1986" (IRC press, 1988, School of Industrial Relations Research Essay Series No 16). Available online: http://irc.queensu.ca/sites/default/files/articles/RE-keon-union-organizing-activity-in-ontario-1970-1986.pdf

[2] Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, CLC-AFL-CIO (BRAC) v American Airlines Inc (1981), 43 di 114, [1981] 3 Can LRBR 90 quoted in John Godard, "Labour Law and Union Recognition in Canada: A Historical-Institutionalist Perspective", (2013), 38:2, *Queen's L.J.* Available online: http://queensu.ca/lawjournal/issues/pastissues/03-Godard.pdf

[3] John Godard, Labour Law and Union Recognition in Canada: A Historical-Institutionalist Perspective", (2013), 38:2, *Queen's L.J.*

[4] Available online: http://www.docdroid.net/86ln/manager-training.pdf.html

[5] Available online: http://www.stringerllp.com/practice-areas/union-avoidance