



## Canadian Centre for Policy Studies

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# Balancing workers' rights and union privileges in a mandatory dues environment

### Introduction

Canadian law with respect to unions and workers' rights is markedly different than similar laws in other western nations. Virtually all western nations prohibit the practice of forcing individuals to become union members by virtue of their employment at a particular workplace. Furthermore, in many countries, those workers who choose not to be a member of the union are not required to pay dues, or at least they are not required to pay the same level of dues as those who do choose to be union members.

In contrast to this, Canada permits collective bargaining agreements to make it a condition of employment that workers in a workplace join a union. What's more, the law also requires workers at unionized workplaces to pay the same level of dues, even in cases where they are allowed, and

choose, to opt out of formal union membership. In the competition between the individual rights of workers and those of organized labour, Canada's laws clearly favour organized labour in almost every possible way.

Canada is the only country in the world where a majority of workers at a particular place of employment are able to compel the remaining minority to pay, against their will, full dues to an organization – a union – to which they may not belong. Canadian law has protected this approach to mandatory dues on the assumption that those mandatory dues are used to directly benefit those individuals from whom they are collected, including those who may choose, where permitted, to not be part of the union. Without mandatory dues, it is argued, a 'free-rider' problem could result where some workers would pay dues and some would not, but all would benefit equally from the

actions of the union. This 'free-rider' affect, i.e. the enjoyment of the benefits associated with union membership by non-members, is precisely what mandatory dues are supposed to address.

Although the fairness of this arrangement is by no means universally accepted among Canadians, including those who are members of trade unions, the purpose of this paper is not to challenge its legitimacy or to initiate a broader discussion as to where exactly the line should be drawn between the entitlements of organized labour and the rights of individual workers. As sorely needed as that discussion may be, the scope of this paper is limited to a discussion of ways to protect workers' individual rights *vis a vis* how their dues are spent while essentially retaining the legal entitlements currently enjoyed by unions in this country. Indeed, a strong case can be made that the implementation of such protections could result in the enhancement of services provided by unions to their members and help them become more effective in their bargaining environment.

### **The Problem**

The theoretical purpose of mandatory dues

is to advance the interests of all workers in a particular workplace, including those who are permitted to not join the union and who choose to exercise that option.

What happens, however, when those mandatory dues are diverted and spent on causes or objectives which clearly have little or nothing do with the direct interests of the workers who pay them? What if mandatory dues are used to provide services to individuals who are neither members (or relatives of members) nor are employed in the workplace in which that union is active?

What if those mandatory dues are used to conduct advocacy on behalf of such individuals, or to promote causes or finance the activities of advocacy groups unrelated to either the members of the union, their relatives, or those other workers employed in the workplace in which that union is active, but who are not members of the union? Does that not create a whole new free-rider problem – i.e. free-riding by those outside of the unionized workplace who do not pay dues?

And to the degree that mandatory union dues *are* used for purposes unrelated to the interests of workers from whom they are

collected, does that not reduce by a commensurate amount the value of the benefit workers derive from paying those dues? Would this not undermine the very argument in support of forcing non-members to pay dues, to wit, that those workers derive a *direct* benefit from the activities of the union?

The answer to each of the above questions, is yes.

### **Recommended Solutions**

Given the mandatory nature of union membership (where required), or the unique requirement that workers pay full union dues even where they are not required to be part of the union and choose not to be, regulations are needed to safeguard the rights of workers and to ensure that dues are being spent in a way that is reasonably connected with their purpose.

There are two measures that should be taken to address this issue:

1. Trade unions should be required to publicly disclose their financial activities, and

2. Trade unions should be prevented from diverting mandatory dues to causes which are unrelated to the needs of their members.

These measures could be accomplished for the federally regulated sector by amending Section 95 of the *Canada Labour Code* to directly prohibit the use of compulsory union dues by trade unions to finance certain activities, and by amending Section 110 of the *Canada Labour Code* (which currently requires the disclosure of financial statements to union members upon request) to require public disclosure of financial statements similar to the disclosure requirements for charitable institutions. Although these two provisions would compliment one another, either, implemented alone, would have an ameliorative effect.

Similar amendments could be made to provincial labour codes.

### **Who benefits?**

The principal beneficiary of these measures would be unionized workers themselves. They would also be the main supporters of such an initiative. According to a 2008

Nanos Research poll, *more than 80% of unionized workers in Canada oppose union leaders giving dues to political parties or for advertising during elections, and nearly 70% oppose union leaders giving dues to advocacy groups unrelated to workplace needs.* (Nanos Research, "Labour Day Poll: Full Report", pp. 52-55 (Ottawa: Nanos Research, 2008))

Nobody should be surprised by the size of these numbers. It is unionized workers' money that is being diverted, often to causes that they do not support. Compelling unions to put that money back into activities which relate to their members' interests could result in more and better services for members or more effective collective bargaining resulting in higher wages and/or better benefits from their employers. (This assumes that the money would be used effectively in the interest of workers, which is not necessarily the case; but, it is at least more likely that the workers would benefit if the money was not being diverted to obviously unrelated political causes).

The benefits are not limited to unionized workers alone. The democratic process itself would be improved by the adoption of such measures. Fair political discourse is an

essential part of a free society; Good ideas can win the debate when the debate is fair. The use of mandatory dues to fund third-party advocacy unrelated to the interests of workers creates uneven playing field though. One side of a policy debate is able to use what is, in effect, expropriated money to drown out its opposition, thereby shifting public opinion in its favour. When this occurs, democracy is undermined.

Finally, free speech advocates, even those who would typically agree with the political positions taken by unions, should support this proposal. Freedom of speech entails the right to also choose to fund or not fund political speech which one does not agree with.

This proposal protects the freedom of speech of unionized workers to use their finances to support political positions they believe in instead of positions they are compelled to support by their union bosses.

### **Potential objections**

Opponents to the proposals made in this paper can be expected to raise a number of objections. They will likely attempt to characterize any such initiative as anti-

union, antidemocratic, and ideologically motivated. Responding to each of these objections in full would require a separate discussion paper. It is, nevertheless, worth while to briefly answer the arguments here.

*Proposals are anti-union.* On the contrary; in a very real way, these proposals are pro-union. Requiring trade unions to invest the dues they collect in the union itself may reduce somewhat their political influence, but this could be more than off-set by improved services and benefits to workers that resulting from this investment and a greater capacity to engage in collective bargaining activities including, if necessary, striking.

*Proposals are anti-democratic.* Some will argue that the proposed regulations will infringe upon trade unions' free speech rights the same way so-called election gag laws have been said to limit the political speech of groups like the National Citizens Coalition by restricting the sort of activities they can engage in during an election campaign. This is an apples and oranges argument. Unlike members of trade unions who are forced to pay dues, supporters of advocacy groups like the National Citizens Coalition give their money freely *because*

they support its activities. In the absence of the sort of regulation proposed in this paper, it is the free speech rights of individual union members that are denied in two important ways: a) they are forced to contribute, through compulsory dues, to causes they oppose, and b) their capacity to contribute to causes they support is simultaneously impaired by reducing their disposable income.

Some might argue that if individual union members do not like what is being done with their money, then they can simply vote in new union leadership. But this misses the point entirely. The right to free speech belongs to individuals, not organizations. The fact that only a minority of workers oppose the kind of contributions by union leadership in no way diminishes their individual right to not be compelled to contribute to causes unrelated to the essential purpose of their union membership with which they disagree.

*Proposals are ideologically motivated.*

Some opponents of these proposals might point out that some of the projects unions fund are generally regarded as quite worthy and are themselves aimed at ameliorating the circumstances of certain minority

groups. They might suggest that an attempt to regulate this funding is more about attack these groups and is 'ideologically motivated'. We hold that if the projects funded by trade unions are demonstrably worthy, then workers and all Canadians should be quite willing to fund them voluntarily. We do not seek to comment on what is being funded, only on the mechanism. The only 'ideology' here is a concern for individual liberty and workers rights.

### **Conclusion**

Many would argue that trade unions have played, and continue to play, an important role in providing benefits to workers in Canada and protecting their rights. The mandatory nature of the relationship between workers and trade unions in certain industries can, however, be an invitation for

abuse. Trade unions enjoy extraordinary powers as a result of this mandatory relationship, including the power, in practice, to tax those who do not wish to be members. Modernizing legislation in order to protect workers from potential abuse at the hands of their unions that can result from these extraordinary powers is both sensible, and long overdue. We can reasonably shift the balance a little bit and protect the individual rights of workers while maintaining the unique entitlements which Canadian unions enjoy.

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