

Mr. Hudak – Learn Your Canadian History

In recent days, we have seen a number of provincial Tory candidates express concerns with some of Tim Hudak's policies, particularly his position on "right to work". Mr. Hudak's position on right to work was outlined in the Tory White Paper on labour law reform released in June 2013 in which he has borrowed many of the extreme positions adopted by the right wing of the Republican Party in the U.S.

The most controversial position is the so called "right to work" which would legally prohibit an employer from deducting dues from employees' pay cheques. As a result, the union would have to collect dues from each individual employee in the workplace. This policy was recently introduced by Governor Scott Walker in Wisconsin in his assault on public sector collective bargaining rights in tandem with the Tea Party and financed by the infamous Koch brothers. In pushing this anti-union policy, Mr. Hudak relies upon the recent enactment of a right to work law in Michigan passed

by a Republican administration...an administration which let Detroit go bankrupt, but supports Detroit giving financial assistance to the Red Wings in building their new hockey arena.

The deduction of union dues from employees, whether a member of the union or not, has been a feature of Canadian labour relations for over half a century. Probably unbeknownst to Mr. Hudak, this arrangement in the workplace was created in Ontario to resolve an Ontario dispute.

In September 1945, Canada experienced its first major strike after the Second World War when the workers shut down Ford in Windsor over the company's refusal to recognize the legitimacy of its trade union, the United Auto Workers, which was democratically selected by its 10,000 workers many of whom were returning soldiers. The strike was a bitter one over union security clauses which Ford had given to its American workers. The strike went on for over three months until a deal was brokered to refer the bargaining dispute to arbitration.

The arbitration was conducted by Justice Ivan Rand of the Supreme Court of Canada, one of Canada's most eminent jurists. Although having been a corporate lawyer when in practice, Justice Rand became one of the most important Canadian judges in respect of the protection of civil liberties at a time before the *Charter of Rights and Freedoms*. Justice Rand usually found a way to protect the liberties of individual Canadians from the anti-democratic tendencies of some of our provincial governments. He was also a very fair person who could find the appropriate balance when parties reached an impasse because of their conflicting interests.

The bitter Ford dispute required a creative and constructive solution to the then intractable fight over the role of the union in the workplace. Like their American brothers and sisters, the union wanted a union shop in which each worker had to be a member of the union. For whatever reason, Ford would not agree to such a clause in Canada. Justice Rand came up with the quintessential Canadian compromise – the agency shop clause which became universally known as the Rand Formula. Under this formula, employees need not be members of the union. However, they must pay

union dues in consideration for the cost to the union of negotiating improved terms and conditions of their employment.

The Rand Formula has become a fundamental part of Canadian labour law. It became part of Ontario law in the late 1970's as a result of another bitter strike in Ontario at Fleck Manufacturing. The Conservative government of Bill Davis enacted the Rand Formula into the Labour Relations Act in order to advance industrial peace in Ontario. In the view of the Davis government, the issue of union security had caused too many bitter strikes. In order to enhance the economic security of all Ontarians, this issue should be removed from the bargaining table. A decade later in the *Lavigne* case, the Supreme Court of Canada upheld the legality of the Rand Formula because of its purpose to promote industrial peace through the encouragement of collective bargaining which is the legislative policy of every jurisdiction in Canada.

From a practical perspective, there are three solid reasons for a Rand Formula clause. The first is that all employees benefit from the bargain a union negotiates with the employer. The negotiation and administration of

the collective agreement is a costly endeavour. All employees should pay for the benefit... there should be no "free riders". If a person can obtain the benefit of the collective bargain without paying, there would be little incentive in paying union dues. Similarly if you could receive public services for nothing, few would pay taxes. Apart from extreme libertarians, no one argues that the deduction of income taxes from the pay cheques of employees is improper or inappropriate.

The second reason is that a Rand Formula reduces the threat to the security of the union. Some employers refuse to accept the representation rights of the union even though these rights have been democratically acquired. Frequently, management will attempt to undermine the status of the union by refusing to follow the work rules or by encouraging opposition to the union. The union needs all of the economic punch which the dues give it in order to defend its legitimate role in the workplace.

Finally, the Rand formula goes some distance in developing employee solidarity, even for non-members. All employees are entitled to file grievances, vote on the contract and receive the other benefits which a

collective agreement gives. Employee solidarity and cohesion goes some distance in putting the union on an equal footing with the employer in a relationship which is fraught with power imbalance.

In light of this long labour relations history, one questions why Mr. Hudak would reject this policy introduced by his predecessor Mr. Davis decades ago. This Canadian solution created by Justice Rand has stood the test of time in promoting industrial peace by encouraging collective bargaining and effectively avoiding labour strife. Perhaps Mr. Hudak should rely upon Canadian labour relations experience and history rather than resorting to solutions put forward by the extremist wing of the Republican Party which has a de-unionization policy of attacking collective bargaining rights and trade unions. Is this what we want in Ontario? I ask Ontarians one question. Who do you trust, the Bill Davis Tories or the Tea Party? I think the vast majority of Ontarians would have a different answer to this question than Mr. Hudak! If Mr. Hudak has to go to the U.S. for his ideas, he should rely on Americans who are far more in tune with Ontarians such as Dr. Martin Luther King or Barak Obama. Both of these men described

the right to work laws as "the right to work for less". An apt description of a very bad policy!