

CHAPTER 2

LABOUR RELATIONS IN CANADA

Preface

Chapter two defines each of the key labour relations terms, explore the historical development of Canadian unions; and outline the models of labour relations that illustrate its interplay with society and the economy, in particular the distribution of power. It will also outline how employee relations differs in union and non-union work settings and the relationship among human resources management, labour relations, and (HRM) professionals.

Learning Objectives

- 2.1 Explain the importance of labour relations in today's organizations.
- 2.2 Describe the differences between labour relations, industrial relations and employee relations.
- 2.3 Outline the historical development of unions and the implications of these events.
- 2.4 Recognize the labour relations framework.
- 2.5 Discuss the role of the human resources management professional in unionized organizations.

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Lecture Outline/Syllabus

I. The Importance of Labour Relations in Organizations

Unions are a very important business partner for both employees and organizations. Unions may come to be for numerous reasons. Perhaps, employees in a workplace experience unfair

treatment from the organization's management. If this continues for a prolonged period, and if the unfairness affects a large enough group of employees at the organization, one or more employees may think about seeking outside assistance to restore a balance of interests between the organization and employees. Perceptions of unfairness may also often stem from the perceived differences in employment terms among employees in similar types of jobs in the organization. Or, perhaps, the organizational culture is characterized by employees feeling powerless in frontline and non-management jobs.

All employees in a non-unionized organization have an individual contract of employment with the organization. When a non-union organization transitions to a unionized employer there are new challenges. One of these challenges is reshaping the organizational culture. Additionally, managers may believe they are empowered to make one-to-one decisions with their now unionized employees. Conversely, employees who may have been swept into a new bargaining unit and can no longer ask their supervisor for approval of a scheduling request that is now covered by the new collective agreement.

Importantly, human resources management (HRM) practitioners who transition from a non-union to a unionized workplace must also make adjustments to how they practice in light of the new rules of a mixed terrain of policies, procedures and a new union contract. The advice and counsel they offer to their management peers must be clear on the range of choices available to supervisors in their day-to-day employee management now governed by a collective agreement. Organizational culture, management practices and employee perceptions will require time to settle into the new workplace and to build their relationship with a new union partner. Approximately 30 percent of the Canadian workforce is unionized; however, labour relations affect all Canadians.

II. The Differences between Labour Relations, Industrial Relations, and Employee Relations

The term industrial relations broadly includes both union and non-union matters and workplaces. As this definition includes both union and non-union workplaces, this means questions regarding topics like the pay of chief executive officers (CEO) to the negotiation of collective agreements would both be industrial relations matters. Others define industrial relations narrowly, contending that the scope of industrial relations is limited to unionized workplaces only. This book adopts the broader definition of industrial relations and views labour relations as part of industrial relations.

Labour relations is then defined as the study of all aspects of the union–management relationship, including the establishment of union bargaining rights, the negotiation process, and the administration of a collective agreement. Therefore, issues that do not involve union–management relations, for example, the question of CEO compensation, are not included as part of labour relations.

Labour relations is all aspects of the union–management relationship, including the establishment of union bargaining rights, the negotiation process and the administration of a collective agreement.

Law regulating union–management relations is most commonly called labour relations legislation. New Brunswick and federal legislation will see references to industrial relations, this is equivalent to labour relations legislation in other provinces and territories.

Employee relations refers to activities and processes aimed at maintaining a productive workplace while managing the employee-organization relationship. Employee relations includes communication, , employee engagement, wellness, diversity, inclusion, and equity management, and employee rights, performance management, discipline, and termination. Some authorities distinguish between union and non-union employees by using employee relations to refer to non-union employees and labour relations to refer to unionized employees. Although employee relations activities such as communication and discipline will not cease if an employer is unionized, we will see in a later chapter that some issues such as discipline must be handled differently in unionized workplaces. Employee relations activities and processes aimed at maintaining a productive workplace while meeting the needs of managing the employee-organization relationship.

III. The Historical Development of Unions and the Implications of These Events

Events in the Development of Labour Relations

- 1812 First union locals of skilled craft workers established
- 1860s US-based unions begin organizing in Canada
- 1872 Unions press for nine-hour workday
- 1886 American Federation of Labour (AFL) established in the United States and Trades and Labour Congress (TLC) established in Canada
- 1900 Federal *Conciliation Act* provides for voluntary conciliation in labour disputes
- 1907 Federal *Industrial Disputes Investigation Act* passed requiring conciliation in specified industries
- 1919 Winnipeg General Strike
- 1925 *Toronto Electric Commissioners v. Snyder*: federal *Industrial Disputes Investigation Act* found to be beyond federal jurisdiction
- 1929 Start of Great Depression
- 1932 Co-operative Commonwealth Federation (CCF) political party established
- 1935 *Wagner Act* establishing collective bargaining rights passed in United States
- 1939 Industrial unions affiliated with Congress of Industrial Organization (CIO) expelled from TLC
- 1940 Canadian Congress of Labour (CCL) formed to pursue unionization of industrial employees
- 1944 *Privy Council Order 1003* establishes collective bargaining rights in Canada
- 1947– Federal *Industrial Relations and Disputes Investigation Act* (now the Canada Labour Code) and provincial labour relations statutes (starting in early 1950s) passed
- 1956 TLC and CCL merge to establish the Canadian Labour Congress
- 1961 New Democratic Party established to succeed CCF
- 1967 *Public Service Staff Relations Act* establishes collective bargaining rights in federal public service; similar provincial legislation subsequently enacted
- 1975 Federal wage and price controls program introduced

1982	<i>Charter of Rights and Freedoms</i> contained in the federal <i>Constitution Act</i> becomes law
1985	Canadian division of United Automobile Workers breaks away from international federation and establishes Canadian Auto Workers
1991	Federal government freezes public-sector wages; subsequently some provincial governments adopt similar restraint legislation
1994	Federal government extends collective agreements with public-service employees and suspends salary increments
2007	Supreme Court of Canada holds that the freedom of association provided in the <i>Charter</i> includes a procedural right to collective bargaining in the <i>Health Services</i> case
2013	National Automobile, Aerospace, Transportation and General Workers of Canada merges with the Communications, Energy and Paperworkers Union to form UNIFOR
2015	Supreme Court of Canada strikes down a Saskatchewan law that prevents public-sector employees from striking, declaring such a prohibition to be unconstitutional

Early Unions

Canada's first labour organizations, in the early 1800s, were independent local unions made up of skilled craft workers such as printers, blacksmiths and shoemakers. They were concerned with protecting their craft status from unskilled workers and providing assistance to their fellow tradesmen who were sick or unemployed. In the following decades, the animosity between craft unions and industrial unions was an issue that divided the labour movement. Craft unions and the labour congress they belonged to did not encourage the organization of unskilled workers in industrial unions. In the 1860s and 1870s, there were attempts to form a national congress made up of local unions. The Canadian Labour Union was the first of these to be established. However, an economic downturn in the 1870s led to the demise of this organization—an early indicator of how the economic environment could affect unions.

The legal environment at the time was also hostile to the organization of unions. The basic rights of employees and unions that are part of today's labour relations system, including the right to organize, the obligation to bargain with the union and prohibitions against discrimination for union activity, did not exist in Canada until 1944. Prior to 1872, restraint of trade laws were applied to union organizing activity, making forming a union an illegal conspiracy and subjecting trade and union supporters to possible arrest and imprisonment. Employers also engaged in practices to avoid unions, including agreements used by late 19th-century employers when dealing with Asian immigrants and other labourers to allow these employees to be terminated if there was evidence that they previously had belonged to a union or if they should support a union organizing drive while employed. Organizations could also ban blacklist former employees who supported unions by identifying them to future employers as union supporters and thus preventing them from being hired.

Entry and Influence of International Unions

From the mid-1800s to the early 1900s, organizing drives initiated by US unions led to the organization of thousands of Canadian employees. By 1902, 95 percent of Canadian union members belonged to international unions based in the United States.

International unions dominated the Canadian labour movement in this period for a number of reasons. The US-based unions sought to organize Canadian employees to avoid the possibility of American employers moving work to non-union workplaces in Canada. Canadian employees were drawn to US unions because they were larger, stronger and had more resources available, including larger strike funds. This was also a time when some Canadians worked for part of the year in the United States and membership in an American union could be an advantage when seeking employment.

The American Federation of Labour (AFL), a federation of national and international craft unions, was formed in the United States in 1886. In the same year, the Trades and Labour Congress (TLC), the first central labour federation to succeed in Canada, was established and was heavily influenced by the AFL. For example, the TLC followed the AFL practice of not affiliating itself with any political party.

The influence of the US international unions and the AFL affected the philosophy and scope of the Canadian labour movement. The philosophy of the US unions at that time became known as **business unionism**. Unions focused on improving the compensation and working conditions for unionized employees through collective bargaining with the employer. In contrast, an alternative union philosophy known as **social unionism** was concerned with improving the compensation and working conditions of bargaining unit members, while also seeking broader economic and social change. The notion of social unionism is still reflected today. UNIFOR, currently the largest private-sector union in Canada, has proclaimed itself to be committed to social unionism, which it describes as follows:

Early Labour Legislation and the Rise of Industrial Unions

In 1900, the federal government passed the Conciliation Act, which was a response to strikes and provided for voluntary conciliation of contract disputes. Following a strike in the coal industry, which caused hardship to the public, the federal government passed in 1907 the Industrial Disputes Investigation Act. This legislation required employers and unions in affected industries to submit contract disputes to a tripartite conciliation board before a strike or lockout could legally take place. However, it should be noted that while this legislation was aimed at preventing strikes and lockouts, it did not require employers to recognize or bargain with unions.

Some observers view the 1919 Winnipeg general strike as a turning point in the history of the labour movement in Canada. It started when metal trades employees walked off their jobs to support demands for union recognition and wage increases. This was followed by the Hello Girls, female telephone operators, who were the first to join the metal workers and start a broader General Strike in Winnipeg in 1919. The Winnipeg Labour Council supported the employees' demands and over 30,000 other employees walked off their jobs in a general strike. The strike

ended after strikers clashed with the RCMP and saw two employees killed. This episode was significant because it may have ended any further attempts to establish a more radical labour movement in Canada. There was still no legal requirement that employers recognize a union, they had to resort to recognition strikes.

In 1925, there was a court decision that significantly affected the Canadian labour relations system. In the case of *Toronto Electric Power Commission v. Snyder*, the federal government's authority to enact the Industrial Disputes Investigation Act was challenged. The employer involved contended that the federal government did not have the authority to pass legislation regulating its business, as labour relations was a provincial matter. Although the Supreme Court of Canada upheld the legislation, an appeal to the British Privy Council ruled that the federal legislation could not be applied to the employer. *Snyder* is significant because it firmly established a divided jurisdiction for Canadian labour relations. The federal government now was seen to have jurisdiction over approximately 10 percent of the workforce, including employees in industries such as banking and interprovincial transport. The remaining 90 percent of the workforce was subject to provincial labour laws.

In the 1930s the conflict between US unionists wanting to pursue the organization of industrial employees and those who did not continued, eventually spilling over into Canada. The drive to organize industrial employees in Canada did not have the same success as it did in the United States, largely due to changes in US legislation. In 1935, as part of the US government's effort to rebuild the economy after the Great Depression, the National Labour Relations Act (Wagner Act) was passed. The Wagner Act established a new industrial relations climate for US employers and unions, by providing for the following:

Wagner Act established the right to organize, compulsory bargaining and prohibition of unfair labour practices in the United States.

- The recognition of employees' right to join a union
- The establishment of a National Labour Relations Board
- A certification process through which unions could obtain the right to represent employees by application to the board
- Prohibition of unfair labour practices by employers, including interfering with employees' right to organize, domination of a union and discrimination against employees for union activity
- The requirement that employers bargain in good faith with a union certified by the Board

This American legislation was a major public policy development. The law no longer allowed employers to use many of their previous tactics such as threatening employees with dismissal or relocation, using contracts and refusing to deal with a union in order to defeat it.

World War II led to a period of economic growth and increased union membership, which doubled from 1939 to 1944. Unemployment fell due to the war effort, and the cost of living increased. The early 1940s was a period of labour unrest with a large number of strikes. Labour leaders in Canada called for legislation equivalent to the Wagner Act. At this time, the Co-operative Commonwealth Federation (CCF), a socialist party based in Western Canada, was enjoying political success and attracted support from union members. In 1943, a Gallup poll showed the CCF ahead of both the Liberals and the Conservatives. A year later, the demands of labour and the political threat of the CCF led to the enactment of Privy Council Order 1003 (PC 1003). This wartime labour regulation brought to Canada the principles established by the Wagner Act. As the foundation of modern Canadian labour relations legislation, it established:

Privy Council Order 1003 established the rights and obligations fundamental to labour relations in Canada.

- The right to join a union
- A Labour Relations Board
- A certification process by way of an application to the Board
- The prohibition of unfair labour practices by unions and employers
- Compulsory bargaining when a union has been certified
- A compulsory conciliation procedure before a strike or lockout
- A provision that no strike or lockout can occur during the life of the collective agreement
- A provision that all collective agreements were deemed to contain an arbitration procedure for the resolution of disputes

PC 1003 prohibited many of the prior practices that employers had used to avoid unions such as threatening, intimidating or discriminating against employees. For the first time, employers were required to recognize and bargain with certified unions. The law also now made it illegal for unions to strike to obtain recognition. After the war, the federal government enacted the Industrial Relations and Disputes Investigation Act, which incorporated the principles established in PC 1003. The legislation covered only industries within the federal jurisdiction. This federal legislation is now Part 1 of the Canada Labour Code. Using PC 1003 as a model, Canadian provincial governments enacted their own labour relations statutes covering provincially regulated employers.

Public-Sector Unionization

Until the mid-1960s, most public-sector employees in Canada did not have the right to unionize. The federal government enacted the Public Service Staff Relations Act in 1965, providing federal employees for the first time with the right to organize. By the early 1970s, the provinces had enacted public-sector collective bargaining legislation, with some jurisdictions providing for arbitration instead of the right to strike. Collective bargaining rights for public-service employees indirectly led to the unionization of white-collar and professional employees in the private sector. Some private-sector professional employees, who had not previously organized, pursued unionization after they witnessed the gains made by public-sector employees. The granting of bargaining rights to public-sector employees had a major effect on total union membership and the composition of the labour movement. From 1964 to 1969, union membership almost doubled, climbing from 1.5 million to almost 3 million members.

With the passage in 1982 of the Constitution Act and its Charter of Rights and Freedoms, unions soon tried to use the Charter to challenge laws, policies and government actions related to labour relations. There has also been a trend by both the federal and some provincial governments to use back-to-work legislation in the early decades of the 21st century. The declining tolerance of citizens, inconvenienced by public-sector union work stoppages, has fueled such considerations. A 2008 public transit strike later caused the City of Toronto to ask the Ontario legislature in 2011 to declare the Toronto public transit system an essential service. The new law removed the Amalgamated Transit Union's right to strike. In 2015, the Supreme Court of Canada struck down the Saskatchewan government's removal of public-service employees' right to strike. An example of how this 2015 decision has influenced collective bargaining was seen a year later when the Alberta government passed the Essential Services Act, which gave employees the right to strike as long as employers and unions agreed on some form of contingency plan.

Frameworks for Labour Relations

The core elements of labour relations include: unions organizing employees; the negotiation of collective agreements; and the administration of those agreements during their terms. There are numerous approaches to, or perspectives on labour relations. Two dominant perspectives are the systems approach and the political economy approach.

Industrial Relations Systems Approach—John Dunlop

Discussion of a theory for labour relations should begin with John Dunlop's outline of industrial relations (IR) systems. Dunlop was a labour economist who taught at Harvard University from 1938–1984. He served as an influential post-World War II figure in government and industrial relations in the United States. One of his key contributions was the Industrial Relations (IR) Systems model.

The model proposed by Dunlop has been criticized. One such critique is that it underestimated the role of conflict in the system. Others have challenged his assumption of a shared ideology among the actors. Specifically, they contend that since the 1980s some American managers have

not shared an ideology with unions, and in fact have attempted to eliminate them. Nevertheless, Dunlop's model has served as the starting point for other models of labour relations. An understanding of the basics of the model is valuable because some commentators refer to components such as a "web of rules" without explanation, assuming that the reader is familiar with the model.

Elements of Dunlop's IR Systems Model

ACTORS OR PARTIES Employers, unions representing employees and government and its agencies

CONTEXT Forces that influenced the demands on, and interactions between, the actors. Examples here include technology (e.g., automation and its impact on the size of the labour force), the product and factor markets (e.g., the extent of the market held by the employer) and the power balance between the actors (e.g., the ability of unions to influence changes to labour legislation).

WEB OF RULES There were three sets of rules that applied to labour relations: rules determined by the employer (e.g., workplace policies), rules created within the negotiated collective agreement (e.g., work schedules) and rules created by government and its agencies (e.g., labour legislation and arbitration decisions).

BINDING IDEOLOGY In Canada and the United States, this ideology includes an agreed-to general acceptance by the actors of capitalism and of unions as legitimate representatives of employees.

The Canadian scholar Alton Craig expanded upon Dunlop's model, outlining an "open systems" approach that provides for feedback "loops" as an essential component of an industrial relations system. The system outlined by Craig is the basis for a framework provided in Figure 1-1.

"Open-system" Industrial Relations—Alton Craig

Figure 1-1 details a simplified example of Craig's "open systems" industrial relations model. His framework has five elements: the environment that may directly or indirectly influence all other aspects of the model; the actors or parties involved in labour relations; the processes or activities in which the parties are engaged; the outputs or results of the parties' activities; and feedback to the first four elements.

THE ENVIRONMENT The environment refers to the economic, technological, social, political and legal factors that affect the parties and their activities and processes. Environmental factors tend to cause the actors or parties in this framework to react to these influences. One may consider, for example, how changes in technology, which allow employers to track more information and monitor employees, can lead to changes in the legal environment such as privacy legislation to protect employees.

Economic Environment—the economic environment refers to the economy of the nation and the competitive position of an organization in a particular industry. For example, if there is an in-

crease in inflation or new competitors in an industry, the union and the employer will be affected when considering pay rates for bargaining unit members.

Technological Environment—the technological environment refers to developments in knowledge that lead to new products and services that could influence, for example, methods of production. Technological developments can also affect union and employer objectives in a number of areas, including job security, training and health and safety.

Social Environment—the social environment refers to the values and beliefs of Canadians relating to work, unions and employers. These values and beliefs may make communities more or less inclined to join or support unions.

Political Environment—the political environment refers to the Canadian political system and the effect it has on labour relations. The political system directly affects the legislation that regulates unions and employers. In November 2017, the Ontario government passed back-to-work legislation ending a five-week strike by community college faculty, librarians and counsellors. Public pressure on the Liberal government to end the strike, affecting some 500,000 students, contributed to this action.

Legal Environment—the legal environment refers to all of the law that affects employees, unions and employers. Unions and employers are heavily regulated by labour relations legislation, which governs matters such as how a union organizes employees and how employers are allowed to respond. Human rights legislation is playing an important role in the administration of collective agreements. For example, addiction to alcohol or drugs is a disability under human rights legislation, requiring employers to reasonably accommodate employees in such circumstances.

ACTORS OR PARTIES There are three main parties shown in Figure 1-1: employers, unions and government. We are concerned with the objectives, power and values of each, because these variables in turn affect the processes or activities they undertake in the next element of the framework. For example, if unions perceive that job security is threatened, their objective will be to attempt to negotiate provisions such as increased layoff notice. If governments think that inflation is a problem, they could enact legislation that puts limits on wage increases.

Other parties also play a role in addition to the three main actors. For example, conciliation officers and mediators are involved in contract negotiations. Arbitrators play a key role in the resolution of disputes relating to the interpretation of collective agreements. Labour relations boards are critical to the system because they administer legislation that governs unions and employers. It might be argued, too, that organizations such as think tanks that comment on public policy and attempt to influence the public and governments are another type of actor. Examples of such organizations include the Conference Board of Canada, the C.D. Howe Institute and the Fraser Institute.

PROCESSES AND ACTIVITIES The third element of the framework refers to the various processes and activities the parties or actors might engage in. It should be noted that the parties do much more than negotiate collective agreements. The list of activities also includes unilateral action by management and unions. For example, if an issue is not governed by the collective agreement, the employer might make changes on its own initiative such as a use of technology policy.

Union–management committees are another important process involving these parties. Some collective agreements establish various committees relating to job classifications, health and safety and other issues. In some workplaces, the employer and the union may establish other union–management task groups not referred to in the collective agreement. In these cases, unions are looked at as one of many stakeholder groups asked to contribute to a particular organizational outcome.

Political activity refers to attempts by unions and employers to influence elections and legislation passed by governments. Employer associations may lobby political parties related to desired changes in labour laws. Unions might try to influence government to pass stronger health and safety legislation. Strikes and lockouts are shown in Figure 1-1 as both a process and an output: either as part of the negotiation process that produces collective agreements or as a result of the negotiation process.

OUTPUTS OR RESULTS The fourth component of the framework sets out the possible results of the processes and activities of the parties. The primary output or result will either be the achievement of a renewed collective agreement that sets out terms and conditions of employment, or a strike or lockout due to unresolved issues between the parties in collective bargaining.

During the term of a collective agreement, unresolved disagreements regarding the interpretation, application or administration of the terms and conditions set out in the contract will result in a rights arbitration process.

Legislation has been included as both a process and an output in the figure—as a process because it is an important activity of government, and as an output to indicate that legislation could be the result of the political activity of unions and employers.

FEEDBACK Craig's contribution to a systems model for industrial relations is seen in this final and essential feature of this model that shows how the elements of the framework are interconnected and affect each other.

Loop 1 (from Processes to Parties) This shows that an experience with a particular process can lead to one or both of the parties seeking to change it. We will see later that rights arbitration, which is used to settle disputes relating to the administration of the contract (such as the termination of an employee), can be slow and costly. This might affect the objectives of the parties. They might seek alternative methods to resolve disputes in the future. If the employer takes unilateral action that the union objects to, the union's negotiation objectives will be affected. If

the employer introduces a dress code, the union might attempt to deal with this in the next round of negotiations.

Loop 2 (from Outputs to Processes and Activities) Here an output of the system can affect the processes used by the parties. Legislation, as an output, might prevent the parties from using a strike or lockout during negotiations, or provide for regulations such as a strike notice.

Loop 3 (from Outputs to Actors or Parties) This shows how outputs from the system can affect the parties, specifically, their objectives, power and values. An extended strike might cause the parties to seek ways to improve their relationship and avoid confrontation in the future. A significant increase in wages might lead the union to focus on alternative objectives in the short term, such as obtaining work sharing or early retirement provisions.

Loop 4 (from Outputs to the Environment) Outputs in the labour relations framework can affect the environment. Wage increases and work stoppages affect the economy. Work stoppages can also affect the attitude of the public toward a particular union or unions in general.

Note that in addition to the loops, there might be links within one of the boxes shown in the framework. The best illustration of this is that an increase in wages and benefits might affect other outputs such as job satisfaction and turnover.

Political Economy Approach

The political economy approach to labour relations emphasizes that labour relations is affected by broader issues in society and the economy, in particular, the distribution of power. In adopting a political economy approach, some observers argue that features of the labour relations system maintain the existing social order and distribution of power in society. It is asserted that employers have the upper hand when dealing with employees, and the establishment of small fragmented single-employer bargaining units means that employees do not have sufficient power to deal with employers. Also, the broad definition of a strike in some jurisdictions, which includes any work stoppage whatever the reason, coupled with the prohibition against strikes during the term of the agreement, means that employees and unions cannot use the strike weapon to pursue political or social change.

John Godard views labour relations from a political economy perspective. He argues that conflict is inherent in the employment relationship for a number of reasons, including:

1. There is a fundamental conflict of interest between employers and employees. It is in the employer's best interests to minimize the wages paid to employees, design work so that it re-quires lower skill levels, and maximize worker effort.
2. The nature of the employment relationship leads to conflict. In society, the values of freedom and democracy are accepted as the norm. In contrast, the relationship between employers and employees is based on the subordination of the employee, and this is a source of conflict.

3. The nature of one's work is a potential source of conflict. Surveys have established that over 80 percent of employees are satisfied with their jobs; however, employees report high levels of concern regarding workload, stress and fatigue.

It is possible that environmental factors, including the economy, may either help or hinder change. We will see later that aspects of the legal environment may also impact labour–management collaboration. The parties' power and values may also be factors. An employer who is in a position of power can implement changes despite union opposition. Employers and union leaders may not believe that collaboration is in their best interest. The processes used by employers and unions—such as traditional confrontational bargaining—may entrench an adversarial relationship.

IV. The Employment Relationship in Non-union and Union Organizations

	Non-union Workplaces	Unionized Workplaces
Legal basis for relationship	Individual contracts of employment	Collective agreement
Terms of employment negotiated	By individual employees	By the union
Nature of employment terms	Possibly unique for each employee	Identical for all employees in the same job class covered by the collective agreement
Dismissal where no cause or allegation of employee misconduct	Employer has obligation to give reasonable notice based on age, length of service and position held, subject to minimum provisions in employment standards legislation.	Employer must comply with notice and severance provisions of the collective agreement, subject to minimum provisions in employment standards legislation.
Dismissal where cause or employee misconduct is alleged	If employer establishes just cause, reasonable notice does not have to be provided. If employer fails to establish just cause, employer must provide reasonable notice but does not have to reinstate.*	If employer establishes just cause, notice and severance provisions of collective agreement do not apply. If employer fails to establish just cause, reinstatement is possible.
Changes in terms of employment	Law regarding constructive dismissal prevents significant changes without consent.	Constructive dismissal doctrine does not apply.
Process to resolve disputes	Court action	Grievance and arbitration process provided in collective agreement

*There is an exception in the federal and Nova Scotia jurisdictions. Non-managerial employees who are not covered by a collective agreement have recourse to an unfair dismissal procedure that may lead to reinstatement.

Terms of Employment

There is a fundamental distinction in the nature of employment contracts in non-unionized and unionized employment settings. In the non-union workplace, the employer negotiates directly with each employee to establish the terms and conditions of employment. When a union negotiates a collective agreement with an employer, these individual contracts of employment, held by employees prior to the union gaining bargaining rights, are replaced by the negotiated collective agreement. Although non-union employers commonly establish consistent policies to standardize terms of employment such as vacation, the terms of individual contracts of employment might be different for employees doing the same job. For example, the employer might agree to provide one employee in a job class with additional vacation time. When employees are unionized, the terms and conditions of employment are the same for the applicable bargaining unit members. Thus, the accumulation of annual vacation entitlement will be set out by some factor, such as seniority, for all unionized employees in a job class.

Employee Termination

There is also a major difference between unionized and non-union workplaces when employees are terminated. When an employer terminates a non-union employee, where there has not been any employee misconduct, there is a legal obligation to provide the employee with reasonable notice. This should not be confused with the notice required by employment standards legislation, which is minimal, based upon the length of service. The reasonable notice required under the common law depends primarily upon factors such as the age, length of service, position held by the employee at the time of termination and the current employment market regarding similar employment opportunities. If the employer dismisses a non-union employee without providing the employee with reasonable notice, the employee can pursue a civil court action against the employer for wrongful dismissal. This legal action is concerned with the issue of whether the employer provided sufficient notice, not with the issue of whether the employer had a valid reason to dismiss the person.

In a unionized setting, the obligation to provide reasonable notice is eliminated. Instead, the employer must comply with the notice provisions of the collective agreement. Some unions have been able to negotiate collective agreements that provide for significant notice in the event of termination; however, some collective agreements do not provide as much notice to employees as the common law would require pursuant to the reasonable notice requirement. This may be one area where the terms and conditions available to some unionized employees are not as favourable as those available to non-union employees.

Reasonable Notice is the notice period employers are required to provide to employees on the basis of factors including age, position, length of service and the current employment market for similar positions.

Wrongful dismissal is a rule of employment law dealing with situations of dismissal without just cause wherein the employer violates its common law duty to provide reasonable notice of termination to the employee.

Where the employer dismisses an employee alleging just cause—that is very serious employee misconduct such as theft, assault or insubordination that justifies dismissal without notice—there is a fundamental difference between the union and non-union settings. If the non-union employer establishes just cause, no notice is required. The non-union employee may decide to file a wrongful dismissal claim against the employer if they believe there is no just cause for terminating their employment. Even if the employer fails to establish just cause, it will have to provide reasonable notice of termination, but will not have to reinstate the employee in most jurisdictions. I

In a unionized setting the union can challenge a dismissal. An arbitrator reviewing a union grievance on the matter of the employee's termination of employment may order the employer to reinstate the employee to their job. This means the employer's ability to terminate unionized employees is significantly reduced and offers job security that non-union employees do not have.

Just cause the employer alleges there was very serious employee misconduct such as theft, assault, insubordination that justifies dismissal without notice.

Constructive Dismissal A non-union employer considering fundamental changes in the terms and conditions of employment must be concerned with the doctrine of constructive dismissal. This is a rule of employment law where the employer makes a fundamental breach of an employment contract that entitles the employee to consider them self-dismissed and to sue the employer for wrongful dismissal. For example, if the non-union employer unilaterally relocates employees, reduces compensation, or demotes an employee to a lower status position, it could face a claim in civil court and be ordered to pay damages.

The doctrine of constructive dismissal does not apply to unionized employees. The employer can make changes in the terms and conditions of employment that are provided for in the collective agreement. For example, in a downsizing and layoff situation, the employer must apply the seniority provisions in the collective agreement, and employees who have been demoted cannot claim that they have been constructively dismissed.

In the event of a dispute between an employer and a non-union employee, the dispute is typically resolved through a civil court action if the parties cannot settle the matter. This is disadvantageous to individual employees, who are not likely to be able to afford prolonged court proceedings. Although there has been some increase in the use of alternative dispute resolution methods such as mediation, these methods cannot be forced upon the parties. In unionized workplaces, unresolved disputes are referred to the grievance and arbitration process. This is significant for a number of reasons, including the fact that this process does not involve any cost to the unionized employee.

Unionization can significantly affect the wages, working conditions, job security and job satisfaction of employees. There is evidence of higher hourly wage rates paid to unionized employ-

ees versus non-unionized Canadian employee. For example, in 2021, unionized employees with a collective agreement earned \$1208.91 per week while non-unionized employees earned \$1049.83 per week <https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1410013401> There evidence indicating that unionized employees have lower job satisfaction than non-union employees. <https://hbr.org/2017/08/research-shows-unionized-workers-are-less-happy-but-why> However, international studies have questioned a failure in previous research to control for factors such as working conditions or the degree that local bargaining is permitted in contract negotiations with the employer.

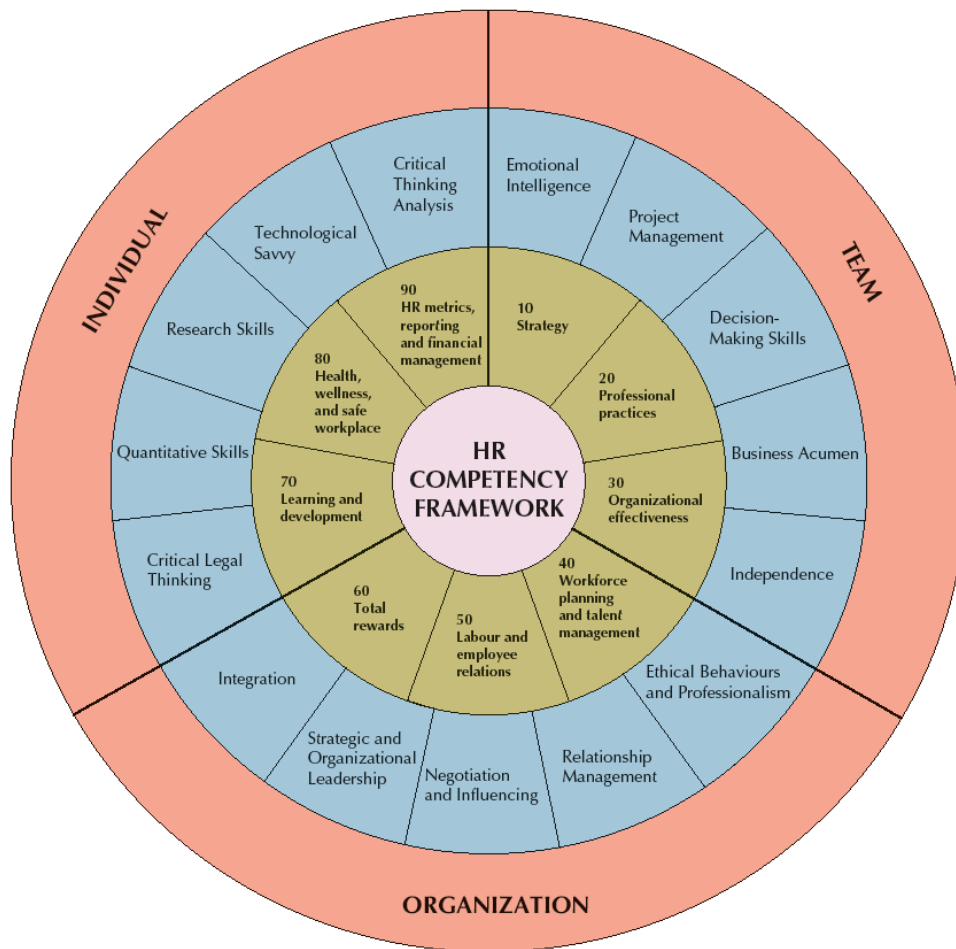
V. Human Resource Management Professionals and Labour Relations

Human resources management (HRM) may be defined as the strategic and operational practices to attract, retain and engage employees who possess the required knowledge, skills, abilities and other attributes to achieve the organizational strategic goals and objectives. Specifically, HRM includes each of the practices including job analysis, human resources planning, employee recruitment and selection, onboarding, training and development, compensation and benefits, health and safety, employee and labour relations.

Human Resources Management

Human resources management (HRM) may be defined as the strategic and operational practices to attract, retain and engage employees who possess the required knowledge, skills, abilities and other attributes to achieve the organizational strategic goals and objectives. Labour relations is part of human resources management. In larger organizations, there might be dedicated human resources management and separate labour relations professionals and departments. Alternately the labour relations department may be a department within the human resources management department. For example, McMaster University houses their labour relations department within their human resources department.

In organizations with a smaller unionized workforce, labour relations activities may be carried out by an HRM practitioner, with support from outside consultants particularly legal advisors. The Chartered Professionals in Human Resources (CPHR) Canada, the Human Resources Professionals Association (HRPA) in Ontario, and the Society of Human Resources Managers (SHRM) for human resources management professionals practicing labour relations. Each of the competencies are embedded throughout this book.

Figure 2-5 Human Resources Professional Association Competency Framework

SOURCE: Human Resources Professionals Organization, *Human Resources Professional Competency Framework* (n.d.), p. 8.

Table 2-4 Human Resources Professional Association—Required Professional Competencies

50.2 LEGISLATION, COLLECTIVE AGREEMENTS, AND POLICIES

C116 Maintain knowledge of the details of collective agreements in place in the organization and in related organizations.

C117 Maintain knowledge of legislation that affects the HR practices at the organization.

C015* Maintain understanding of the organization's vision, mission, values, and goals.

C118 Treat employees in accordance with the principles of natural justice.

C119 Manage the risk of litigation and conflict in all interactions with employees.

50.3 LABOUR AND EMPLOYEE RELATIONS STRATEGIES

C120 Evaluate the risks associated with alternative labour and employee relations strategies.

C121 Evaluate the costs associated with alternative labour and employee relations strategies.

C122 Evaluate the benefits associated with alternative labour and employee relations strategies.

C123 Formulate alternative labour and employee relations strategies to achieve business objectives.

C124 Analyze the overall strengths and weaknesses of alternative labour and employee relations strategies.

C125 Recommend optimal labour and employee relations strategies.

50.4 NEGOTIATION

C001* Maintain awareness of broad economic, societal, technological, political, global, and demographic trends.

C126 Formulate negotiation strategies that take into consideration variables within and outside the organization.

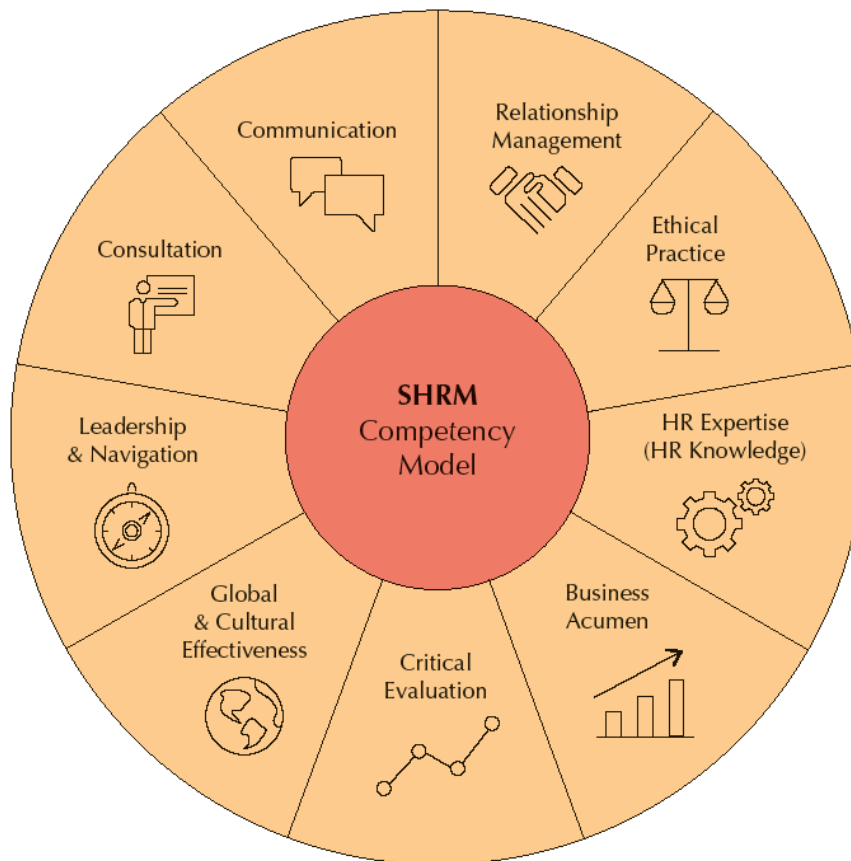
C127 Negotiate to resolve labour and employee disputes.

C128 Participate in mediation processes in an effective and balanced manner.

C129 Participate effectively in or facilitate arbitration proceedings.

*An asterisk is used to denote a competency that appears more than once.

SOURCE: Human Resources Professionals Organization, *Human Resources Professional Competency Framework* (n.d.), pp. 9, 17–18.

Figure 2-7 Society for Human Resource Managers (SHRM) Competency Model

SOURCE: Society for Human Resource Management, *SHRM Competency Model* (2012), p. 9, https://www.shrm.org/LearningAndCareer/competency-model/Documents/Full%20Competency%20Model%2011%202_10%201%202014.pdf.

VI. Labour Relations Perspectives

1. Some employers attempt to avoid unionization by paying non-union employees wages that are equivalent to the wages paid unionized employees. **True. Students may be familiar with situations where employers have paid non-union employees wages equivalent to unionized workers.**
2. Over the past 30 years, the percentage of employees who are represented by unions has dramatically declined in Canada. **False. Union density has declined in Canada, yet the decline cannot be described as dramatic.**
3. A government might pass special back-to-work legislation ordering an end to a strike in the public sector. **False. Although it is exceptional, a few strikes in the private sector have been ended by back-to-work legislation. Students could be referred to the significance of strikes by asking why a government might pass back-to-work legislation.**

4. When a union attempts to organize employees, there is always a vote held to determine if the employees wish to be represented by the union. **Depends on jurisdiction. The issue of whether a union should be certified by relying on membership cards or a representation vote is critical.**
5. Collective agreements can provide that employees are required to become union members. **True this is written in closed shop collective agreements.**
6. An employer could be forced to terminate an employee who refused to join the union. **False. Employers can only terminate employees for just cause.**
7. When a vote is held to authorize a strike, all employees in the group—both union members and employees—who would be on strike are entitled to vote. **True. There is a requirement for a strike vote and all employees in the bargaining unit are entitled to vote.**
8. When an employee takes a complaint to their union—for example, the employee alleges termination without cause—the union is required to pursue the matter with the employer. **False. This question deals with the issue of the ownership or control of the grievance and arbitration procedure. In most cases it is the union that has the ownership or control over the grievance and arbitration process, and the union can determine whether a grievance is referred to arbitration. This is subject to the union's duty of fair representation in many jurisdictions.**
9. Unions reduce productivity and profitability. **False. The statement lumps productivity and profitability together, and they should be considered separately. On average unionized firms are less profitable; however, the effects of unions on productivity are less clear. In some situations unions have increased productivity. It may help students to understand this if they recognize that productivity refers to the amount produced per worker. If employers make technological improvements so that the number of workers is reduced but output remains the same or increases, productivity has been increased, although employment may have been reduced.**

VII. Review Questions

1. Distinguish between labour relations and industrial relations.

This text defines labour relations as referring to all aspects of the union-management relationship including issues relating to how a union gains the right to represent employees, the negotiation of a collective agreement, and the administration of the agreement. The key point is that labour relations is used to refer to some connection with, or aspect of unionization. Industrial relations is a broader field of study which covers all work related issues at both union and non-union workplaces. As the terms are used here, labour relations is a part of industrial relations. The issue of whether unionized teachers should be allowed to strike is a labour relations issue. Controlling absenteeism, a concern in both union and non-union settings, is an industrial relations issue.

2. What are two likely consequences of unionization? Explain why these outcomes may be perceived as having a positive or negative impact on those affected by this change.

The purpose of this question is to have students watch for and think about the effects of unionization as they proceed in the text. Students should later see that employer recruiting, selection, training, compensation, ability to manage, productivity, and profitability are impacted by unionization. Unionization also affects employees because it impacts employee job security, job satisfaction, compensation, training and development, and working conditions.

3. a) Explain the meaning of the following statement: “An employer has constructively dismissed a non-union employee.”

A constructive dismissal refers to the employer making significant changes in terms of employment without the consent or agreement of the employee. Employers could constructively dismiss non-union employees when they reduce compensation, change the location of the employment, or impose a demotion. A constructive dismissal may be treated as a termination by the non-union employee, entitling the employee to any notice provisions or payments provided for under employment standards legislation and reasonable notice at common law. At one time it was thought that an employer could avoid a constructive dismissal by providing the employee with reasonable notice of the change in the terms of employment. However, a 2008 decision of the Ontario Court of Appeal, *Wronko v. Western Inventory Service Ltd.*, called this into question. The employer's application to the Supreme Court of Canada to appeal this decision was dismissed. Accordingly, at this time there may be a difference in the law between provinces. In Ontario, providing advance notice will not be by itself be sufficient to avoid a claim for constructive dismissal. The employer will have to go further and advise the employee that if they refuse to accept the change or new terms of employment the existing contract will be terminated the end of the working notice period and offer to rehire the employee under the changed terms after the working notice period has expired. Courts in other provinces are not bound by this Ontario Court of Appeal decision and it is possible that in some provinces an employer may be able to avoid a constructive dismissal claim simply by providing reasonable notice of the change in the terms of employment.

b) Can a unionized employee be constructively dismissed? Explain why or why not.

No. The doctrine of constructive dismissal does not apply to unionized employees. The issue for a unionized employee is whether any change complies with the collective agreement. For example, if there was a collective agreement which covered two locations, and an employee was moved from one location to another, a claim of constructive dismissal could not be made - the issue would be whether the relocation was done in compliance with the collective agreement. Similarly, if a unionized employee is demoted in the process of a downsizing, the issue is whether the collective agreement was complied with; the employee cannot claim that there has been a constructive dismissal.

4. How did the *Wagner Act* influence labour relations in Canada?

In 1935 the *Wagner Act* in the U.S. established collective bargaining rights including mandatory bargaining. In 1944 *PC 1003* was passed in Canada. This is viewed as a major turning point in the development of labour relations and is the foundation of current day labour relations. The features of *PC 1003* are listed in the text.

5. Identify three factors in the environment and for each one, explain the impact of such forces on one of the processes and activities or the outputs or results seen in the Framework for Labour Relations.

Economic Environment—the economic environment refers to the economy of the nation and the competitive position of a firm in a particular industry. For example, if there is an increase in inflation or new competitors in an industry, the union and the employer will be affected when considering pay rates for bargaining unit members.

Technological Environment—the technological environment refers to developments in knowledge that lead to new products and services that could influence, for example, methods of production. Technological developments can also affect union and employer objectives in a number of areas, including job security, training and health and safety.

Social Environment—the social environment refers to the values and beliefs of Canadians relating to work, unions and employers. These values and beliefs may make communities more or less inclined to join or support unions. This is seen in variations in union density across provincial jurisdictions in Canada.

Political Environment—the political environment refers to the Canadian political system and the effect it has on labour relations. The political system directly affects the legislation that regulates unions and employers. In November 2017, the Ontario government passed back-to-work legislation ending a five-week strike by community college faculty, librarians and counsellors. Public pressure on the Liberal government to end the strike, affecting some 500,000 students, contributed to this action.

Legal Environment—the legal environment refers to all of the law that affects employees, unions and employers. In later chapters, we will see that unions and employers are heavily regulated by labour relations legislation, which governs matters such as how a union organizes employees and how employers are allowed to respond. Human rights legislation is playing an important role in the administration of collective agreements. For example, addiction to alcohol or drugs is considered a disability under human rights legislation, requiring employers to reasonably accommodate employees in such circumstances.

VIII. Discussion Questions

1. If you have worked in a unionized work setting, to what extent is the relationship between unions and employers collaborative and to what extent is it adversarial?

Class discussion could build upon examples of union-management cooperation and hostility. Some of the variables which students could be asked to consider, if they do not raise these points on their own, include the union involved, the maturity of the relationship, and the economic situation. The discussion could explore whether some unions were more or less collaborative, whether the parties became more collaborative as the relationship matured, and whether the relationship was affected by external economic pressure such as the threat of job loss.

2. If you have not worked in a unionized environment, to what extent do you believe the relationship between unions and employers is collaborative and to what extent is it adversarial? What influences have shaped your opinions?

It is expected that students who do not have any experience with a union and are relying on reports in the media may perceive that the union-management relationship is always adversarial or more adversarial than is actually the case. For example, these individuals may not be aware of joint union-management committees and other collaborative efforts.

3. If you were a union member, would you want your union to have a philosophy of social unionism or business unionism? Explain.

Business unionism focuses on improving the compensation and working conditions for unionized employees through collective bargaining with the employer. In contrast, an alternative union philosophy known as social unionism was concerned with improving the compensation and working conditions of bargaining unit members, while also seeking broader economic and social change. This question demonstrates that individuals will have varying concepts of the purpose of unions based on their personal experiences and philosophies. Historically, unions have had a significant impact on social change.

4. Do you agree or disagree with the political-economy approach? Why?

The political economy approach emphasizes a conflict of interest between employers and employees. Students will have different views on the extent to which employers and employees have a fundamental conflict of interest. The political economy approach emphasizes that labour relations are affected by the distribution of power in society. Some students may be more or less likely to accept the idea that the workplace is shaped by and is a reflection of the distribution of power in society.

IX. Web Research

Go to the Canadian Labour Congress (CLC) website and identify two suggested advantages of union membership for Canadian employees. What, if any, implications would these advantages pose to HRM professionals?

Student responses will vary depending on their preconceptions of unions and their impact on the work environment. The CLC website provides insight to the history of unions and their benefits to all employees regardless of being unionized. The CLC website also describes the current initiatives they have prioritized which may be of interest to students.

Advantages listed on the website include:

Job, economy, and environmental: HRM professionals would be required to manage jobs to the collective agreement

Better pay and benefits: HRM professionals would be required to compensate employees to the collective agreement

Workplace health and safety

Trade and international affairs

Retirement security: HRM professionals would be required to structure employees' retirement plans to the collective agreement

Social justice and democracy

Gender equality: HRM professionals would be required to ensure employees experience gender equality

Ending discrimination: HRM professionals would be required to ensure employees do not experience discrimination

X. Vignette

How Is Technology Impacting Unions

Numerous environmental factors impact unions—demographics, politics, legislation, and information technology (IT). Just as IT dramatically impacts our personal lives with smartphones, cloud storage, and streaming music and entertainment, it also has profound impacts upon employees, their jobs, and their relationships with their employers. Unions have also been directly impacted by and impact IT within organizations.

Research has shown that unions do not prevent the adoption of IT in organizations. In fact, unions have been involved with its implementation and administration. Unions are also concerned with the impact of IT on employee health and safety in the workplace. Importantly, unions also work to ensure IT is applied reasonably and ethically toward employee workplace monitoring, particularly in light of the work-from-home policies organizations adopted during the COVID-19 pandemic. Additionally, unions work with organizations to ensure the increased productivity and reduced work hours required to complete tasks due to IT are reflected in the employees' working conditions.

The hope is that union involvement with the adoption of IT in organizations will be beneficial and equitable. Unions could be positioned to ensure IT adoptions are efficient, less disruptive, and less costly. Unions can also monitor the environment to proactively plan for IT changes and these impacts on the workplace, the work employees do, and the collective agreements. Ultimately, unions can foster work–life balance and reduce the employees' and organizations' carbon pollution to reduce climate change, with IT reducing times to complete tasks at work.

Source

Stanford, Jim, and Kathy Bennett. *Bargaining Tech: Strategies for Shaping Technological Change to Benefit Workers*. Vancouver, BC: PowerShare, Centre for Future Work, June 2021. <https://centreforfuturework.ca/wp-content/uploads/2021/06/Bargaining-Tech.pdf>

XI. Case Incident: Could This Happen to Me?

Marlie and Johanna were cooling down after their weekly game of hockey at the local rink. While several of their team members had already left for the pub, the two millennials struck up a conversation about their lives since the last game held earlier that month.

“You’ll never guess what happened to one of my co-employees earlier this week,” said Johanna. “I bet I can top whatever that was with my own story,” countered Marlie. “But you go first.” “Well, one of my co-employees, who has worked at the shop for four years, was called to the manager’s office just before the end of the shift on Friday.” Johanna went on to say that their colleague returned from the meeting and it was evident she had been crying. “She said she had just been told that their job was over and not to report for work next week!” exclaimed Johanna. “And there was no mention of why this decision was made or any details about their pay or benefits. Imagine!”

Marlie finished loading their hockey equipment into their bag. She looked up at Johanna and said, “That’s nothing! Since our last game, my supervisor was told by the organization’s HRM department that he was no longer going to be part of the department’s management team. They informed him that he would be returning to their former Tech III job along with a cut in pay. They said this change would start as of the next pay period.” Johanna shook their head as she turned to their friend. “I seem to remember something from one of my business courses at college that makes it sound like both your boss and my friend have been given a raw deal. I think these people have more rights under the law. Don’t they?” Marlie said there were others at their shop who were feeling discouraged about a number of things like the lack of affordable benefits, a sense of fairness in getting internal job openings and a recent series of workplace injuries that had not been addressed.

They both left the rink on the way to join their team mates. Marlie and Johanna walked the five blocks to the pub in silence, both feeling somewhat vulnerable by the stories they had just shared. They each thought silently, “Could that happen to me?”

1. What are some legal questions that would need to be answered regarding the changes in the terms and conditions of work for Johanna's and Marlie's work colleagues?

In Johanna's case the typical legal questions would be the terms of their employment contracts, the length of employment, and what severance was provided. In Marlie's case the typical legal questions would include the terms of their employment contracts and if they were willing to accept this change in duties and pay to their employment contract. If not, this could be viewed as a constructive dismissal.

2. After looking at the website for employment standards in your province or territory, state the amount of reasonable notice that is required in the situation described by Marlie in this case. What information is needed to determine your answer here?

Provinces and territories will vary in the amount of notice required in this situation. Factors typically include how long the employee has worked for the organization, and in some cases the size of the organization and number of employees being terminated.

3. Johanna's manager may get legal advice to file a claim against their employer. Describe what this action is called and what would this individual be seeking in light of their announced job change.

This action is called a summary dismissal and it highlights one of the aspects of employment standards legislation and Common Law. Employers may terminate an employee with providing a reason as long as they provide the appropriate notice or pay in lieu of notice. Students should also be aware that Common Law will typically provide a greater notice period than employment standards legislation requires