

AGENDA - Executive Meeting - Oct. 25/78, 5:00 P.M.

1. Motion to seat Barbara Findlay, our lawyer to speak on matters surrounding the LRB charges and to make related comments.
2. Motion to seat Sheila Perret (of the Provincial) as an observer.
3. CUPW

Motion: "that AUCE Local 1 support CUPW, both morally and financially in the sum of \$2,000.00, in its rights as a trade union to bargain collectively and in good faith and in its right to strike and its struggle to maintain the principles of democracy."

Motion to moved and seconded by the Executive and to be printed in the newsletter along with a covering statement.

"that we ask a Spokesperson from the Vancouver Local of CUPW to speak at our next General Membership Meeting."

3. Results of Provincial Executive Meeting, Sat. Oct. 21/78 re our motion asking for financial aid.
4. Recommendation from Ann and Michelle that:
 - after consulting with Both Barbara Findlay and Leo McGrady on matters surrounding the complaint to the LRB by 8 of the 11 who were charged for crossing I.U.O.E. picket lines (complainants) that the Executive undertake to contest the complaints to the LRB.
 - we postpone the disciplinary hearings until a ruling has been made by the LRB.

[REDACTED]

 - a bulletin be sent to all members of AUCE Local 1 of facts surrounding the case.
 - a) Barbara Findlay will report on the legal aspects of the case. Hers vs Leo McGrady's interpretation of the Code - chances of winning, and related matters.
 - b) Report on conversations with the CCU and the B.C. Fed..
 - c) Implications of winning or losing to the trade union movement as a whole.

A.U.C.E. Executive Meeting
25.10.1978

Re: Section 7 Complaint.

The facts of the situation, briefly stated, are as follows:

A.U.C.E. resolved, by a membership vote, to honour I.U.O.E. pickets if they were put up around buildings where A.U.C.E. members work.

The I.U.O.E. did picket certain "A.U.C.E." buildings. Most people honoured the pickets; some people crossed.

Charges were laid by Nancy Wiggs against some of the people who crossed the picket line in violation of the membership resolution.

A Committee of Inquiry was elected and conducted an investigation. Special membership meetings were scheduled as disciplinary hearings.

The accused members filed a complaint with the Labour Relations Board alleging that A.U.C.E. was violating section 7 of the Code and asking the Board to order that A.U.C.E. not proceed with any disciplinary hearings. There was an informal hearing at the L.R.B. and A.U.C.E. agreed to postpone the disciplinary hearings pending a decision about how to deal with the section 7 application by the accused people.

As it now sits, the Labour Relations Board is waiting to hear whether A.U.C.E. wants to proceed with the section 7 application. The number of accused people has been reduced to three; Nancy Wiggs withdrew the charges against the others.

The position of the accused at the Labour Relations Board

The position which the accused/complainants are taking through their lawyer, Bob Wicks, goes like this.

(1) The conduct of A.U.C.E. in honouring the I.U.O.E. picket line was an illegal strike.

(2) If the Union disciplines people for refusing to participate in an "illegal strike", the Union is acting in a manner which is arbitrary, discriminatory, and in bad faith, and in contravention of the Union's duty of fair representation under section 7 of the Code.

Section 7 of the Code says:

7(1) A trade-union or council of trade-unions shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the employees in an appropriate bargaining unit, whether or not they are members of the trade-union or of any constituent union of the council of trade unions, as the case may be.

(2) (same duty on employers' organization in representing its members)

Honouring a Picket

It may surprise you to think that honouring a picket line is a strike or anything like it. But as you know if it is a "strike" it is prohibited by the Code unless (a) your agreement has expired and (b) you've had a vote and strike notice.

The Code contains no protection for people who honour picket lines (as opposed to the strikers who erect them). The Code just doesn't mention honouring picket lines at all.

So is honouring a picket line a strike? "Strike" is defined in the Labour Code:

'strike' includes

- (i) a cessation of work; or
- (ii) a refusal to work; or
- (iii) a refusal to continue to work; or
- (iv) an act or omission that is intended to, or does, restrict or limit production or services,

by employees in combination, or in concert, or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment, or of compelling another employer to agree to terms or conditions of employment of his employees, and "to strike" has a similar meaning

There are three elements to that definition: failure or refusal to work; by employees acting in concert or in accordance with a common understanding; for the purpose of compelling their or another employer to agree to terms and conditions of employment.

Clearly there is a refusal or failure to work on the part of AUCE people who honoured the picket line.

Most of the cases about whether or not honouring a picket line is a "strike" focus on the question of whether the action was "concerted". If the honouring Union (AUCE in this case) did not have a vote, did not invite the pickets, did not instruct its employees to honour a line, etc., then the Board has said that there is no action in concert even if each and every employee comes to work and, seeing a picket line, turns around and goes home. The Board says that in such cases employees are acting individually and so there is no "concerted" activity and so the fact that the employees honoured the picket line is not enough to make it a strike.

In this case, there is concerted activity since AUCE took a vote and in fact passed a resolution; they paid strike pay; etc. It is probable that the activities of AUCE members in honouring the picket line was at the very least "in accordance with a common understanding" and that therefore this element of the definition of strike would be met.

Whether or not the actions of the Union can be characterized as being "for the purpose of compelling their employer to agree to terms or conditions of employment, or of compelling another employer to agree to terms or conditions of employment of his employees" is a matter about which there are divergent legal opinions. Is "union solidarity" different than trying to force a struck employer to settle a strike? In this case, what was AUCE's purpose in honouring the IUOE picketline? To force UBC to settle with the IUOE? To demonstrate solidarity with the IUOE? To demonstrate the support among campus unions for each other? All of those things?

There is no case decided by the B.C. Labour Relations Board which decides whether the purpose of demonstrating union solidarity is the same as the purpose of compelling an employer to settle a strike. If they are the same, then on the facts of the AUCE/IUOE situation all three elements of the strike definition are satisfied, and the actions of AUCE in honouring the IUOE picket was may have constituted, technically, an illegal strike.

What if there was an "illegal strike?" Can AUCE still discipline members who crossed

Even if the Board issued a declaration that the actions of AUCE constituted a contravention of Part V of the Code (re illegal strikes), the Board has a discretion to refuse to issue an order. In this case the Board might refuse to issue an order prohibiting AUCE from disciplining members even though the activity was technically illegal.

B.J. Findlay

Executive Meeting Wednesday, October 25, 1978.

Present: Myra Christianson, Marjorie Butt, Lid Strand, Carole Cameron, Jean Lawrence, Lissett Nelson, Richard Melanson, Karen Peplow, Cobie Wennes, Barbara Findlay, Michelle McCaughran.

Richard Melanson that we seat Barbara Findlay. CARRIED
Lid Strand

Jean Lawrence that the agenda be adopted. CARRIED
Myra Christianson

Lid Strand that we seat Sheila Perrett (from the Provincial
Carole Cameron as an observer. CARRIED

3. Lissett read and circulated for signing an article of support for CUPW, to be published in the next Newsletter.

Anne Hutchison that the following motion be printed in the NL
Michelle McCaughran with a covering statement. CARRIED

"that AUCE Local 1 support CUPW, both morally and financially in the sum of \$2,000.00 in its rights as a trade union to bargain collectively and in good faith and in its right to strike and its struggle to maintain the principles of democracy."

Ann Hutchison that we ask a spokesperson from the Vancouver Local
Michelle McCaughran of CUPW to speak at our next General Memb. Meeting. CARRIED

3a. Jean Lawrence that we defer hearing the results of the Provincial
Michelle McCaughran Executive meeting of Oct 21, 1978 until Sheila Perret
arrives. CARRIED

4. Barbara outlined our present position viz. Leo McGrady's and her own interpretations of the 'legality' question with regard to withdrawing services. Difficulty lies in the inability to predict how the Board might rule. Lawyers offer disparate opinions.

"There is no case decided by the B.C. Labour Relations Board which decides whether the purpose of demonstrating union solidarity is the same as the purpose of compelling an employer to settle a strike. If they are the same, then on the facts of the AUCE/IUOE situation all three elements of the strike definition are satisfied, and the actions of AUCE in honouring the IUOE picket may have constituted, technically, an illegal strike."

Re Section 7: There may be some defense arising from the Collective Agreement that argues we have negotiated protection of jobs in the event that members refuse to cross picket lines, therefore, in exchange, the Union has the right to demand allegiance from its members.

B.C. Fed meeting had to be postponed in deference to CUPW crisis. CCU representative suggested we should proceed and said we had their full support.

