

Labor Legislation Needs a bit of Human Service Reality:

Being a union member and the right of unions to strike are both essential elements in our democracy. I have been a member of a union and was actually an entry-level worker in health care when CUPE was originally organizing in New Brunswick. Throughout my career of 5 decades I have seen and worked with the best and worst of what collective bargaining brings to the health care environment.

Health Care Services have their roots in such pillars as The Hippocratic Oath (compassion; do no harm) and the leadership of Florence Nightingale who modeled dedication to patients and self sacrifice. This is what caring for people with illnesses and complex challenges has been about for generations.

Nursing homes bear that designation because they are not just dwellings but places in which frail seniors can feel safe and secure which are intended to emulate the care and compassion so central to what nursing has been about for generations. If residents were physically and mentally able they would be at home.

That unions have an important role in our society is without question. All organizations and all managers are not created equal. Some enjoy a wonderful workplace culture while others do not. Some managers are engaging personalities by nature, others insecure and autocratic.

So the union can play an important role in ensuring that organizations treat their employees with dignity, respect, and with fair compensation practices. This can be taken to extremes when the union seeks to protect employees whose performance is known to be substandard. One employee once told me that she checks the schedule and if certain employees were on her unit, she called in sick!

The principle of the Duty of Fair Representation sometimes has meant that employees whose performance or on the job behavior is marginal can, and do, receive the full protection of the union up to and including full arbitration, Labor Board hearings and more. Sometimes this representation can even raise the eyebrows of fellow employees.

What is questionable, however, is how collective bargaining disputes are resolved. A good friend, veteran of leadership in a major union, told me with pride: we never had to strike because we could always find a way to make a deal with management.

When management is the government, a whole new set of issues is inserted into the process. In the current dispute between government and CUPE nursing home workers, government does not employ the workers yet it sets the terms under which any round of bargaining can be resolved in requiring approval of bargaining limits. In collective bargaining terms, government has been referred to as "the ghost at the table" wherein unions go through the bargaining motions with the employer's representative so they can get to the real issue of compensation, dictated by government.

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Nursing home workers perform work that is near and dear to the hearts of the public; they care for mothers and fathers in their declining years. So when the press reports that there is a bargaining impasse, public sympathy often goes to the workers and union. In health care disputes, negotiators use that to the maximum believing that the broad band of public opinion goes to those who care for the sick and elderly. And that is true; the public loves those who provide health services.

In collective bargaining, all that the public gets is the official positions put out by the parties. Normally the union expresses publicly its position with threats of strike, followed by a cerebral response from the employer outlining the limitations. Unions have a membership that is watching closely and wants to see their union fighting for them

I remember the first strike that I experienced in health care. The same staff that was caring for sick people on the nursing units suddenly was walking out of the building. Nurses felt honor bound to support the union but were ever so torn emotionally because of the Florence Nightingale heritage and their intense training in caring and compassion.

In another strike in 1992, I remember negotiating with the union at sessions held at 3.30 a.m. to determine the workers that the union would agree to designate for the following day. The psychological pressure created is not soon forgotten and the negative impact on staff whose job is to care for sick people was enormous.

Remnants of the 2001 CUPE strike in nursing homes were still evident in 2005 and 2006. I had just arrived at York Manor in 2006 and the working atmosphere between management and union was not pleasant. During the strike, seniors were cared for by management staff, board members, family members, volunteers. I remember hearing about near misses!

Nursing home staff do a marvelous job normally in caring for these people; many staff do not have professional certification but often do have the PSW designation or on the job training. Above all, for the most part they are caring and compassionate people.

The threat of strike presents to these caring people the prospect of leaving the people who normally they say they love and care about. Legalities and rights aside, the psychological distress is enormous and the pressure of being conflicted should not be underestimated.

Having a system that allows strike that has a provision for designated workers is equally problematic. Management is forced to engage persons to perform care who may or may not have appropriate training. Designated workers earn full compensation while those on strike get strike pay unless they get some work with a non-union shop during the strike.

Binding arbitration without limitations and restrictions is a formula for financial disaster for nursing homes and government; the experience in other jurisdictions in which that has been the conflict resolution method must be heeded.

So a modified process of arbitration should be sought and implemented. This must include the employer's ability to pay, economic circumstances, comparisons with similar industries, and more. Mature negotiators of good will can make that work well for employees.

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To the public who just want good health care, this is all distasteful. Seniors do not need to see their favorite caregiver on a picket line nor do they need to hear the chatter amongst employees about “impending strike” and bad management.

Ours is a civilized society and we do not need to be brandishing swords to settle labor disputes in health care; it is so demeaning and contrary to the founding principles of the caring professions and vocations. Hippocrates and Florence would be horrified that health care had come to this!

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