

# Some Disputes Are Baked Into The Cake, But Others Can Be Harder For Members To Stomach



Unions and the employees they represent are not monolithic. There are often disputes between them. It descends beyond the omnipresent historic complaints where employees with good grievances are denied the opportunity to grieve. After all, that is baked into the system. Unions must represent all of their members and the interests of the whole may outweigh the benefit of pursuing an individual employee's concern to arbitration. The vast majority of well-founded grievances are not proceeded with. And smart employers, knowing this, reject most grievances, knowing that the union will seldom proceed anyway. Employers who settle all their grievances incentivize their employees (and union) to grieve and their union not to back down – and therefore end up receiving far more grievances and paying out far more monies to settle than they would otherwise if they had taken a more rejectionist position.

Another issue where members and their unions issues can collide is unions spending their members' money on peccadilloes of no interest whatsoever to most of the union membership. Some members actually disagree with the union's initiatives, and may bitterly resent them. However upset at their own monies being spent on these initiatives, under current legislation, they have no recourse at all. The law permits unions to spend their union dues on pretty much anything they wish and it would take legislative change to amend this.

What recourse do such employees have?

1. They could bring a duty of fair presentation case to the provinces' labour board against their union based on the labour relations acts throughout Canada's specification that unions have a duty not to act in a matter that is arbitrary, discriminatory or in bad faith toward their membership. But that is a difficult case and the historic percentage chance of success in those cases is minuscule because the labour boards view unions to be amateur bodies which are permitted to make mistakes. And if an employee succeeds, the remedy is generally only to require the union to take up a grievance on behalf of the employee. Scant solace if the grievance is against the union itself.
2. They could pursue "right to work" laws making union dues entirely voluntary. That is one way to ensure those dues will never be used against the interest of a paying member. But the Rand formula requiring everyone covered by a bargaining unit to pay

dues is too entrenched for this to be a realistic remedy. Even [Pierre Poilievre](#)'s Conservatives just voted against replacement worker legislation along with the [Liberals](#) and NDP, suggesting no political appetite to truly take on unions. Another approach would be to limit compulsory dues only to collective bargaining interests, so that the union has to justify that its dues are being used to support the specific economic interests of the workers they represent. Any dues for other causes would be voluntary on the part of individual members.

3. A third alternative is in the hands of a local unit itself. It can choose to disassociate itself from larger unions who they have become uncomfortable with the initiatives of and affiliate with another union instead. Given the drop in union membership in the private sector over the last many years, there are many unions anxious to take the disaffected members of others. For many unionists who have been involved in the movement for years, leaving a union entirely might be just one step too far and this could be an attractive alternative.

4. Finally, there is the option to decertify. This outcome can be achieved in Ontario. If 40 per cent (the threshold is different in some provinces) of a union local signs a petition, something I've been involved with numerous times in the past. A vote will then be put to all members.

I grew up in Hamilton where non-union Dofasco gave their members increases above those of Stelco every time Stelco settled through negotiations or a strike. Dofasco employees made more than Stelco employees without any of the stresses and lost income of being unionized. The concern of most employers in being unionized is not economic, but the attitude and inefficiencies embedded in most collective agreements. As a result, many employers would be delighted to pursue the Dofasco model and simply pay their employees a little more.

Unionized employees have no power to require their union to accept even legitimate grievances, they cannot sue for wrongful dismissal or constructive dismissal and they can be laid off with impunity. So, what exactly are the advantages?

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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