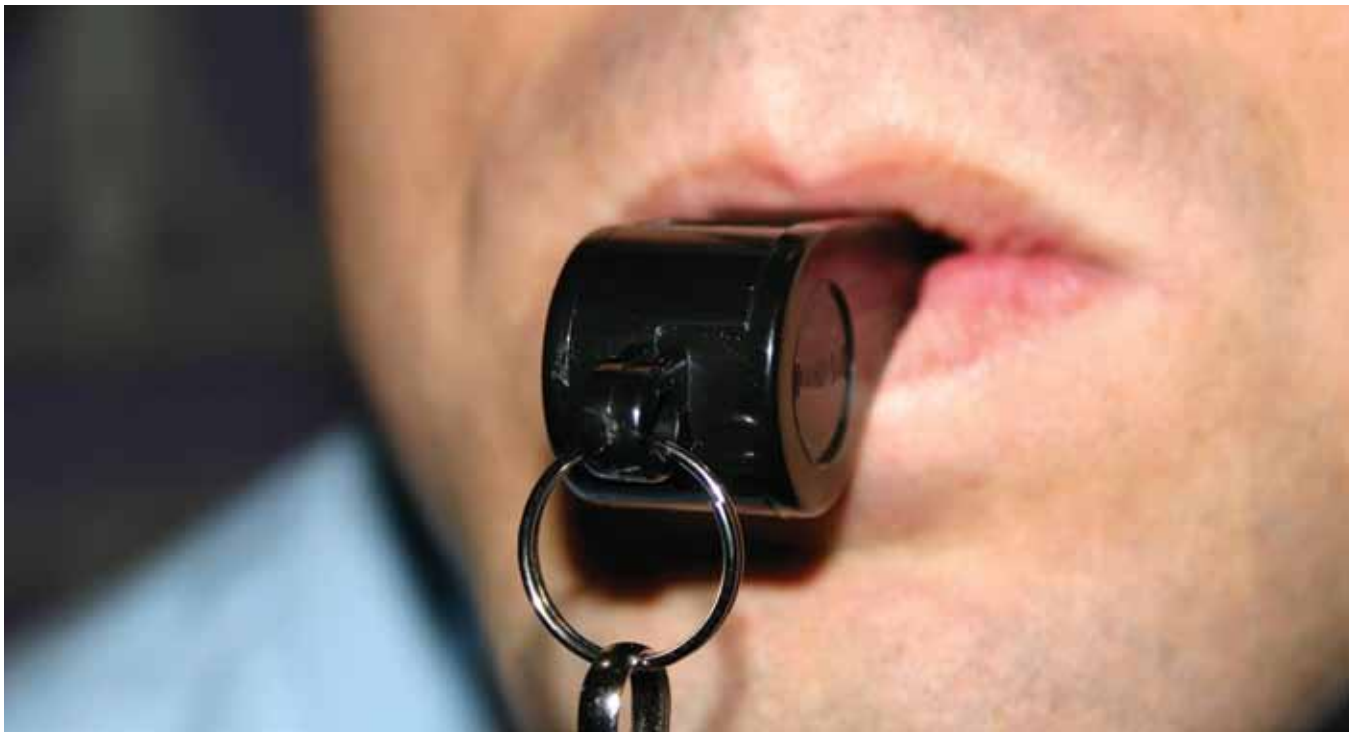
{ Steward Notes }

VOL. 6 • ISSUE 1 • WINTER 2013

UNION STEWARDS ARE THE FRONT LINE OF DEFENCE FOR UNION MEMBERS IN THE WORKPLACE. STEWARDS PLAY ONE OF THE MOST IMPORTANT ROLES IN THE LABOUR MOVEMENT.



Whistleblower Protection Act:

What stewards need to know about Bill 4

by Tyler Bedford
Communications Staff

"It's fine, Cindy, I always claim the cost of political fundraiser tickets to the department.

I've been doing it for years. So go ahead, submit your receipt to last night's constituency fundraiser," said Sally, a senior manager at Alberta Energy.

Cindy, knowing it's illegal in Alberta for publicly-funded institutions, like her department, to make donations to political parties, has knowledge of workplace wrongdoing and wants to make the wrongdoing known.

She heard the government's proposed Whistleblower Protection Act would shield her from retaliation if she reports this wrongdoing. Cindy goes to her union steward for advice.

What union stewards need to know

Bill 4, the Public Interest Disclosure (Whistleblower Protection) Act, is a good start and recognizes not only the need for employees to report worksite misconduct, but also the need to protect whistleblowers from retaliation.

Whistleblower Protection *Continued*

However, the Act fails in some key areas to properly shield employees.

If you think Bill 4 will completely protect a member from retaliation if they report wrongdoings in the workplace, you need to take a closer look.

Bill 4 claims to protect against employer retaliation if an employee reports a wrongdoing. However, should an employee be dismissed after reporting a wrongdoing, it is up to the grievance procedure to prove the employee was let go because of their disclosure, which may be difficult to do. The Act does not assure job protection.

It's important for union stewards to note that if a member's complaint is verified and the member faces discipline or dismissal, the employer is fined but the member's job is not guaranteed. AUPE has requested the Public Interest Commissioner be given the power to reinstate employees who are dismissed as a result of reprisal for disclosure of wrongdoing.

In addition, the Act states that government employees must report wrongdoings to an appointee of the department's deputy minister. Most likely, many members will not feel comfortable reporting to a management appointee, particularly when it may put their job on the line. Moreover, it is not yet clear if the Act guarantees anonymity to whistleblowers. AUPE has called for the reporting procedure to be independent of the employer and anonymity guaranteed in order to fully protect the whistleblower.

Without the assurance whistleblowers won't lose their job if they report a wrongdoing, and without the ability to report a wrongdoing to an independent body, stewards may want to advise members to use caution before they make their disclosure. Members must be aware of the shortfalls in the Act. This is an unfortunate reality and as you can see, improvements are needed.

Stewards with further questions about Bill 4 are encouraged to contact the union for further clarification and guidance.

{ If you think Bill 4 will completely protect a member from retaliation you need to take a closer look.

Steward Training

Members from across northern Alberta came to Edmonton to take part in a Union Steward Level 1 course Nov. 7 (below left), and a Union Steward Level 2 course Nov. 21 (right, below right).

Time to lawyer up? Likely not.

by Michael Hughes
Union Representative

When a member is harshly disciplined at work or perhaps even terminated, they know their union steward is there to help. But some may also feel they should retain a lawyer on their own. Before a member commits to retaining legal counsel - and potentially spending heaps of hard-earned money - there are a few things they need to know.

We should look to the comments of the Supreme Court of Canada in the 1995 decision *Weber v. Ontario Hydro*. In that decision, Canada's highest court emphasized that where a collective agreement contains a provision for final and binding settlement by arbitration (such as Article 29.06 in AUPE's Master Agreement with the Government of Alberta), and where the dispute in question is one "arising under (the) collective agreement," the parties do not have the option of attempting to resolve such matters in court. The Court went on in Weber to note that the following are matters that will frequently be found to arise under the collective agreement: wrongful dismissal; bad faith; constructive dismissal; and damage to reputation. However, it is notable that the Court set out a fairly expansive approach for determining just what can be said to arise under a collective agreement.

Armed with the knowledge that a grievance may be a matter that should be resolved at arbitration rather than in court, members may still wonder why this is not something that should be handled by their own lawyer. The reason is found in the bilateral nature of a collective agreement, which is the document that governs unionized workplaces. There are effectively two parties to a collective agreement for labour law purposes—the employer and the union. As noted by the Supreme Court in the 1984 decision *Gagnon v. Canadian Merchant Service Guild*, the union has the exclusive power to represent employees in the bargaining unit. Unionized employees do not need to (and cannot) arrange their own legal representation for the purposes of arbitration of matters arising under the collective agreement.

Stewards may have heard about individuals having a lawyer involved after the arbitration process, but even this is not so straightforward. As noted above in the clause from the Master Agreement, arbitration is frequently treated as being "final and binding" - which means it will generally be your last kick at the proverbial can. There are limited circumstances in which an arbitrator's decision will be appealed to a court in a process known as "judicial review." As discussed by Brown and Beatty (1:5000), an arbitration award can be successfully judicially reviewed where an arbitrator:

- has made a procedural error (e.g. not allowing one of the parties adequate time to present argument);
- has exceeded her/his jurisdiction (e.g. ordering something that she/he simply does not have the power to do, such as demanding that one of the parties apologize at the end of hearing); or
- has made an error of law (e.g. applying an incorrect legal test to a given factual scenario).

Generally speaking, the courts respect the discretion of labour arbitrators. As such, arbitration should generally be seen as the final step in a grievance and a member may not need to deal with a lawyer at all.

HAVE QUESTIONS?
CONTACT YOUR MEMBER SERVICES OFFICER
CALL 1-800-232-7284

Have your local/chapter number and worksite location ready so your call can be directed quickly.

Labour Education

Upcoming courses and training

For information on any of these courses or to register please call **1-800-232-7284**

Edmonton

Introduction to Your Union
Jan 23
Mar 26
May 1
June 14

Union Steward Level 1
Jan 29-30
Mar 13-14
June 25-26

Union Steward Level 2
Feb 20-21
Apr 4-5
June 11-12

Contract Interpretation
Feb 6
Apr 30
June 27

OH&S Advocate Level 1
Feb 13-14
Apr 23-24
June 19-20

OH&S Advocate Level 2
Mar 20-21
May 15-16

Respect in the Workplace
Mar 27
May 31

Union Officer Training
Apr 9-10
June 5-6

Calgary

Introduction to Your Union
Jan 23
Mar 26
May 1
June 14

Union Steward Level 1
Jan 29-30
Mar 13-14
June 25-26

Union Steward Level 2
Feb 20-21
Apr 4-5
June 11-12

Contract Interpretation
Feb 6
Apr 30
June 27

OH&S Advocate Level 1
Feb 13-14
Apr 23-24
June 19-20

OH&S Advocate Level 2
Mar 20-21
May 15-16

Respect in the Workplace
Mar 27
May 31

Union Officer Training
Apr 9-10
June 5-6

Red Deer

Introduction to Your Union
Feb 5
Apr 4
June 6

Union Steward Level 1
Feb 12-13
Apr 11-12
June 13-14

Union Steward Level 2
Mar 19-20
May 28-29

Contract Interpretation
Feb 21
June 7

OH&S Advocate Level 1
Mar 26-27
May 22-23

OH&S Advocate Level 2
Apr 17-18

Respect in the Workplace
Mar 14
May 7

Union Officer Training
June 18-19

Steward Notes is published by the Alberta Union of Provincial Employees to provide information of technical interest to AUPE Union Stewards, worksite contacts and other members. Topics deal with training for union activists, worksite issues, disputes and arbitrations, health and safety, trends in labour law, bargaining and related material. For more information, contact the editor.

President
Guy Smith

Executive Secretary-Treasurer
Bill Dechant

Vice-Presidents
Jason Heistad
Erez Raz
Carrie-Lynn Rusznak
Glen Scott
Susan Slade
Karen Weiers

Executive Director
Ron Hodgins

Editor
Mark Wells
m.wells@aupe.org

Writers
Tyler Bedford
t.bedford@aupe.org

Michael Hughes
m.hughes@aupe.org

Design
Jon Olsen

The goal of Steward Notes is to help today's AUPE union stewards do their jobs effectively. To help us, we encourage readers to submit story ideas that deserve exposure among all AUPE stewards.

Story suggestions for Steward Notes may be submitted for consideration to Communications Staff Writer Tyler Bedford by e-mail at t.bedford@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

Alberta Union of Provincial Employees
10451 - 170 Street NW
Edmonton, AB T5P 4S7
T: 1-800-232-7284
F: (780) 930-3392
info@aupe.org
www.aupe.org

AUPE