

## CHAPTER 2 THE ENVIRONMENT

### Chapter Overview

The framework provided for labour relations in Chapter 1 referred to the objectives, values, and power of the parties and the numerous activities or processes that the parties engage in. In this chapter, we will consider environmental factors that affect the parties and the processes of labour relations, especially contract negotiation. Six aspects of the environment—economic, technological, demographic, social, political and legal—are not isolated domains: developments in one may affect others. For example, an economic downturn might affect the political process by leading to the replacement of a fiscally conservative or right-wing government with a more left-leaning government or vice versa. In turn, this may affect the legal environment because the newly elected government may be more or less likely to enact pro-business labour relations legislation. Such political viewpoints may also influence views on demographic factors and related legal entitlements of union members.

### Chapter Websites

Website	Web link reference
Website for The Fraser Institute	<a href="https://www.fraserinstitute.org/">https://www.fraserinstitute.org/</a>
Website for historical Consumer Price Index information	<a href="http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/econ46a-eng.htm">http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/econ46a-eng.htm</a>
Website for the Canadian Human Rights Commission	<a href="http://www.chrc-ccdp.gc.ca/eng">http://www.chrc-ccdp.gc.ca/eng</a>
Websites for territorial and provincial human rights commissions / tribunals	<a href="http://www.chrc-ccdp.gc.ca/eng/content/provincial-territorial-human-rights-agencies">http://www.chrc-ccdp.gc.ca/eng/content/provincial-territorial-human-rights-agencies</a>
Website providing the Canadian Charter of Rights and Freedoms	<a href="http://laws-lois.justice.gc.ca/eng/Const/page-15.html">http://laws-lois.justice.gc.ca/eng/Const/page-15.html</a>

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**Chapter Summary****I ECONOMIC ENVIRONMENT**

Economic factors are critical to unions and employers. The economic environment has been divided into four main areas: the macroeconomic environment, government economic policy, demand at the level of the firm and the industry, and trends and issues affecting labour relations.

**A Macroeconomic Environment**

The macroeconomic environment refers to the overall economic picture including the growth rate of the economy, inflation, and the rate of unemployment. Inflation is a particularly important issue affecting employers and unions because real wages will be reduced. Inflation has not recently been a problem in Canada; however, there have been periods in the past when governments have intervened when inflation has been deemed to be excessive. The macroeconomic environment will affect the following:

- wage expectations of employees
- wage demands made by unions
- the ability of employers to increase compensation
- the incidence of strikes
- public support for an employer or a union in the event of a strike

The Canadian economy depends upon exports and this means employers, and in turn unions, will be affected by the value of the Canadian dollar and foreign trade practices, particularly U.S. trade practices.

## **B Government Economic Policy**

The government may attempt to regulate the economy through monetary and fiscal policy. Government taxation and spending policies have been affected by concerns relating to the level of government debt. In recent years the primary objectives of governments have been to control inflation and reduce government debt. When inflation has been a threat governments have followed a high interest policy and reduced spending. This policy has the effect of reducing aggregate demand, which in turn affects employers and unions.

## **C Industry-and Firm-Level Demand**

The demand for the good or service that an employer produces is particularly important to the employer and the union. In times of decreasing demand employers will be reducing employment levels and unions will be concerned with job security. In times of increased demand the employer may be in a better position to provide wage increases. Some firms are more sensitive than others to economic factors such as the interest rate. The price elasticity of demand, the sensitivity of the quantity demanded to a change in price, is a factor affecting demand that is important to the employer and the union. An elastic demand is more sensitive to a change in price and reduces the ability of the employer to pass along increased costs, including increased labour costs, to the consumer. A distinction is drawn between an elastic demand and an inelastic demand. Figure 2-1 illustrates an elastic and an inelastic demand and the effect on the quantity demanded when there is a change in price.

## **D Other Economic Trends and Issues Affecting Labour Relations**

There are many key trends and economic issues that affect the competitive position of employers, employer demands in bargaining, the bargaining power of employers and unions, and the demands made by unions.

### **1. Labour Market Changes**

The labour market refers to the supply of and demand for workers in various occupations. Labour shortages in some occupations have led to higher compensation. The key changes in the labour market include the following:

- a) Globalization: **Globalization** is the trend toward firms obtaining resources and producing and selling their products anywhere in the world. It means that international boundaries have little significance for commerce.

b) Trade Liberalization: **Trade liberalization** is the trend to international agreements that reduce tariff barriers between countries. The most significant such agreement for Canadian unions and employers is the United States-Mexico-Canada Agreement (USMCA), formerly known as the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico, renegotiated by representatives of all three countries in September 2018.

c) Deregulation: **Deregulation** refers to the change from a business regime in which the government regulates market entrants and prices to one in which the market is open to competition. Deregulation has contributed to increased competitive pressures on former relatively high-wage regulated and publicly provided services that were somewhat removed from competitive pressures. This has led to labour market adjustments, including reductions in wages and employment in the former relatively high-wage regulated and publicly provided sectors.<sup>11</sup>

d) Non-standard Work: **Non-standard work** arrangements other than the traditional full-time jobs will raise issues for employers and unions. Part-time employees have been difficult for unions to organize because some are younger employees who lack experience with unionization. Part-time employees have higher turnover which poses a problem for unions. The use of non-union part-time employees by the employer may be an issue in contract negotiations.

e) Mergers: **Mergers** lead to concerns relating to job security because of layoffs, the issue of which of two unions will represent employees, and the seniority rights of employees.

f) Downsizing: **Downsizing**, the loss of jobs, and job security are issues that employers and unions will have to deal with and may place unions on the defensive in contract negotiations.

## II TECHNOLOGY

Technology affects a number of issues that are important to unions and employers including:

- job security, which may be threatened by technological advances
- productivity increases which could affect compensation
- ergonomics and health and safety concerns
- compensation could be affected by increased or reduced skill requirements for jobs

## III DEMOGRAPHICS

a) *Aging Workforce*: An aging workforce may cause possible future labour shortages and affects the preferences of employees and unions. For example, older employees may be more concerned with pensions.

b) *Younger Employees*: Younger employees have different preferences such as desiring challenging work, which affects unions and employers.

c) *Female Participation*: The increased female participation rate will affect the internal policies of unions and the demands made by unions, such as day care, measures to eliminate harassment, and flex time.

- d) *Diversity*: Diversity trends of the four (4) designated groups vary by group for federally regulated employees. Figure 2-4 provides an overview of progress in representation of these four designated groups over time. Human rights legislation in Canada holds labour unions accountable to take action to protect against discrimination in workplaces. Figure 2-5 identifies corporate website links for the five largest Canadian unions, named in Chapter 4 of this text, and how each promotes workplace diversity for their members.

## IV SOCIAL ENVIRONMENT

The social environment includes the values and beliefs of Canadians that will affect unions and employers. For example, beliefs relating to unions will affect the propensity of employees to join a union. The social environment affects the legal environment of labour relations because governments will tend to pass legislation that is acceptable to the public.

*Labour Relations Issue 2-1 could be used to determine the beliefs held by the class regarding unions and employers. The first six questions in Labour Relations Issue 2-1 are based on a survey of Canadian and American workers discussed in The Paradox of American Unionism: Why Americans Like Unions More Than Canadians Do But Join Much Less. Question 7 was added to determine the percentage of students who have been represented by a union. The questions in this issue can be used to determine the attitudes of class members towards employers and unions, and form the basis of a class discussion. Conduct an in-class survey, or other multiple-choice form that will allow an analysis of the responses, in preparation for a discussion in a subsequent class. The percentage of students to respond to each alternative can later be reported back to the class in a discussion about attitudes and values relating to unions and employers. Students are interested in what their colleagues think and the extent to which their attitudes are the same or different from the general population. The attitudes of students could be revisited at the end of the course after they have learned more about issues such as seniority provisions in collective agreements, the union's duty of fair representation and the effects of unionization.*

## V POLITICAL ENVIRONMENT

### A Divided Jurisdiction

The Canadian political system affects labour relations. The parliamentary system coupled with the presence of a social democratic party allied with labour has periodically led to legislation that is favourable to unions in some jurisdictions. Conversely, amendments to labour relations legislation that are unfavourable to unions may be only one election away. The division of authority between the federal and provincial governments means that unions and employers may have to deal with different employment and labour relations rules depending upon the jurisdiction. The potential advantages of the divided jurisdiction include:

- smaller jurisdictions may allow a more prompt response
- experimentation is facilitated
- legislative responses unique to the jurisdiction are possible.

The divided jurisdiction also has some drawbacks including confusion regarding the different rules relating to employment and labour relations matters and increased costs.

## VI LEGAL ENVIRONMENT

Labour relations is heavily regulated by the legal environment:

- i. employment standards legislation provides for minimum terms of employment
- ii. human rights legislation prohibits discrimination and harassment
- iii. labour relations legislation regulates union and employer conduct

The parties cannot agree to waive or contract out of employment standards, human rights, or labour relations legislation.

### A Human Rights Legislation

Human rights legislation prohibits discrimination on listed grounds of discrimination.

#### 1. Meaning of Discrimination

Federal and provincial human rights legislation in each jurisdiction in Canada set out prohibited grounds of discrimination. While there are a number of prohibited grounds that apply to all of these jurisdictions, certain protections are not assured in every part of Canada. For example, discrimination on the basis of age, marital status, physical or mental disability and sexual orientation are found in federal and human rights laws throughout Canada. Certain demographic factors such as family status, pardoned convictions and gender identity do not fall within protected grounds in several Canadian jurisdictions. An individual or group is discriminated against.

#### 2. Types or Forms of Discrimination

Discrimination could be direct (intentional) or indirect (unintentional). Indirect discrimination refers to a situation where a neutral rule has an adverse impact. For example, a minimum height requirement will have an adverse impact on women.

#### 3. Duty to Accommodate

The duty to accommodate requires measures to avoid adverse impact on protected groups. Possible measures to accommodate are listed in Key Considerations 2-1. There is a limit on the duty to accommodate: measures that would impose an undue hardship are not required.

#### 4. Factors Determining Undue Hardship.

Factors that are used to determine whether there is an undue hardship are listed in Key Considerations 2-2. Accommodation issues will be dealt with on a case-by-case basis, and it is possible that a measure that would be an undue hardship for one employer may not be an undue hardship for another. The duty to accommodate imposes obligations on unions and employees as well as employers. Additional applications of the duty to accommodate will be addressed as needed in subsequent chapters where issues such as seniority and discipline are referred to.

#### 5. Defense: Bona Fide Occupational Qualification or Requirement

A discriminatory rule or requirement is permissible if the employer can show that it is a BFOQ or BFOR. The text refers to the three-part test in the *Meiorin* decision of the Supreme Court of Canada relating to the establishment in Labour Relations Issue 2-2.

## **B The Canadian Charter of Rights and Freedom**

The *Charter* protection of fundamental freedoms, including freedom of expression and freedom of association in section 2, and the prohibition against discrimination in section 15, will have implications for labour relations.

### 1. Application of the *Charter*

The *Charter* applies to public, not private activity.

### 2. Limitations on *Charter* rights

There are two limits on *Charter* rights:

Section 1 which allows *Charter* rights to be violated if it is established that such limits can be “...demonstrably justified in a free and democratic society.”, and

Section 15 which provides the “notwithstanding” clause that allows a government to declare that legislation will operate despite the *Charter* for a period of five years.

### 3. Implications of the *Charter*

The implications of the *Charter* have been described in terms of six issues.

a) *Expansion of human rights protection.* In an important case, an individual in Alberta was terminated because of his sexual orientation. This case is a good example of how the *Charter* was used to extend protection on the basis of sexual even though human rights legislation did not prohibit discrimination on that ground.

b) *Collective bargaining.* In the *Health Services* case, the Supreme Court of Canada has extended *Charter* protection to collective bargaining. This is a significant development because governments will no longer be able to pass legislation that nullifies collective agreements unless it can be established that the legislation is saved by section 1 or the notwithstanding clause is invoked.

c) *The right to strike.* Courts to this time have held that the *Charter* does not protect the right to strike.

d) *Union dues.* The compulsory deduction of union dues has withstood a *Charter* challenge.

e) *Right to organize.* The courts have found that in some situations a complete prohibition against organizing is a violation of the *Charter*. This has not meant that employees have been given the same rights as other workers, including the right to strike. This is an area that is evolving - cases including a challenge by RCMP officers should be monitored for future *developments*.

f) *Privacy Rights.* In 2016, a provinces privacy legislation was successfully challenged by the union. In this case, members of the union challenged the union’s and company’s right to record their activities at the picket line, specifically those that crossed the picket line. The courts found that the purpose of identifying members who crossed the line was legitimate, and that the privacy legislation would have infringed on Union’s freedom of expression under the *Charter* and permitted the recording.

## Answers to Review Questions

### 1. What are two ways in which the macroeconomic environment affects unions and employers?

The macroeconomic environment affects the objectives and bargaining power of the union and the employer. The concept of bargaining power is further discussed in Chapter 8 when the negotiation of the collective agreement is considered. When inflation increases, unions will seek to protect the real wages of employees by pursuing higher wage increases and cost of living provisions in collective agreements. In a recession or economic downturn, unions will seek collective agreement provisions to protect job security such as notice of layoff provisions, retraining and transfers, and severance payments. In response to union demands for wage increases and/or cost of living provisions employers will wish to avoid providing wage increases which make them less competitive and reduce profits. Employers will also want to avoid contract terms that reduce flexibility such as provisions requiring retraining. In an economic downturn employers may seek to limit wage increases or seek concessions from the union.

The overall economic environment affects the bargaining power of the union. Employees are more likely to support a strike in a period of economic growth when alternative jobs are available. A period of economic growth may also suggest to employees that the employer has the ability to increase compensation. It is possible that the public is more likely to support a strike in a time of economic growth when it appears that the employer is profitable and has the ability to pay. In contrast, some may think that employees should be happy they have a job in an economic downturn.

### 2. What distinguishes between a good or service with an elastic demand and one with an inelastic demand?

A good or service has an inelastic price elasticity of demand when the quantity demanded is less responsive to a change in the price. The quantity demanded would be less price responsive (inelastic) when one or more of the following factors are present:

- the good or service is a necessity
- there are no substitutes readily available
- the item is a small portion of the buyer's budget.

An example of a good with an inelastic demand is a medicine for which there are no substitutes available.

A good or service has an elastic price elasticity of demand when the quantity demanded is more responsive to a change in the price. The quantity demanded will be more price responsive when one or more of the following factors are present:

- the good or service is a luxury or discretionary item
- there are substitutes readily available
- the item is a larger portion of the buyer's budget

An example of a good with an elastic demand would be air travel where competing airlines offer similar flights.



The distinction between an inelastic and elastic demand is important because the producer of the good or service that has an elastic demand will be less able to increase prices if wages or other costs are increased.

**3. How might possible bargaining priorities may differ for the following employee groups: younger employees, female employees and visible minorities?**

Younger employees prefer increases in wages as opposed to deferred benefits such as pensions; they may also be concerned with family-work balance. Older employees will be concerned with pensions, health benefits, and retirement provisions. Because female employees may bear a disproportionate responsibility for childcare they may be more concerned with issues such as flextime, and day care. Female and visible minority employees may also be more concerned with harassment issues, pay equity and employment equity.

**4. Why has it been more difficult for unions to organize part-time employees?**

Part-time employees are more difficult for unions to organize because many part-time employees are younger and do not have any experience with unionization. Also some part-time employees are employed in industries such as the fast food industry where unionization is not the norm. Further, part-time employees have a higher rate of turnover, which poses a problem for union organizing.

**5. Describe two economic trends or issues that might affect labour relation?**

The following economic issues and trends have affected labour relations:

1) Labour Market Changes. In a non-union environment to principle of supply and demand will dictate the wages of employees. Any factor that causes a decrease in the demand for labour, such as an economic downturn, should lead to decreased levels of employment and lower wages. On the supply side, any factor that causes an increase in the supply of labour will tend to increase levels of employment and reduce wage levels. Conversely, factors causing a decrease in the supply of labour will tend to decrease the level of employment and increase wage levels. The presence of a union can increase the collective power of employees when dealing with a downturn of wages.

2) Globalization. **Globalization** is the trend toward firms obtaining resources and producing and selling their products anywhere in the world. It means that international boundaries have little significance for commerce. A company may obtain resources in one country, produce in another country, and sell in many other different countries. Globalization also means that capital will move to wherever the highest return is provided. This is significant, because it means increased international competition.

3) Trade Liberalization. **Trade liberalization** is the trend to international agreements that reduce tariff barriers between countries. The most significant such agreement for Canadian unions and employers is the United States-Mexico-Canada Agreement (USMCA), formerly known as the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico, renegotiated by representatives of all three countries in September 2018.

4) Deregulation. **Deregulation** leads to increased competitive pressures that may affect the employer's ability to pay. The concessions by unions representing Air Canada employees referred to at the beginning of the chapter illustrate this situation.

5) Non- Standard Work. **Non-standard work** refers to work arrangements other than traditional full-time employment, including part-time and temporary work. Statistics Canada defines part-time employment as a job that involves less than 30 hours per week at their main or only job. There has been a significant increase in the number of employees who hold part-time jobs. Part time employees pose a challenge for unions. Since part-time employees are paid lower wages and receive fewer benefits, employers have used part time works to reduce coasts. Unions have found it difficult to organize part time workers

6) Mergers. **Mergers** lead to union concerns with job security and could also involve issues relating to seniority where two unionized employers are combined. For example, there was a dispute between former Air Canada and Canadian Airline pilots following the merger of those two organizations.

7) Downsizing. **Downsizing** puts pressure on unions to try to avoid the loss of jobs and may involve foregoing wage increases in order to save jobs.

## 6. Explain how government economic policy might affect unions and employers.

Monetary and fiscal policy could be aimed at stimulating economic growth or limiting growth to control inflation. Monetary policy that controls inflation through higher interest rates reduces demand. In turn this could cause layoffs and put downward pressure on wages. Monetary policy could be aimed at lowering unemployment by stimulating demand through interest rate reductions. However, in recent years this has not been a primary objective of government. An expansionary monetary policy could lead to economic growth that might increase the employer's ability to pay and lead employers to avoid a work stoppage caused by a strike or lockout. Fiscal policy to control inflation would involve increases in taxation and reductions in government spending to reduce demand. In recent times increasing taxes may have become politically impossible. Fiscal policy to increase economic growth to reduce unemployment would involve reductions in taxation and / or increases in government spending to increase demand. Economic growth could lead to employers wanting to avoid a work stoppage caused by a strike or lockout and increase the employer's ability to pay.

## 7. What is a current example of technological change that poses a threat or an opportunity to unions-management relationships?

1) Job Security. Technological change will include innovations that allow employers to reduce the number of employees required by replacing employees with capital equipment.

2) Compensation. Technological change will affect the skills, effort required, and working conditions which in turn affect compensation. Where job skill and effort requirements are reduced because of technological change employers may seek to reduce compensation. Where technological change involves the use of more skills, such as computer skills, unions may seek wage increases.

3) Health and Safety. Changes in methods of production may involve reductions in health and safety risks or lead to new health and safety concerns. Using robots in areas where there are fumes and other dangers reduces health and safety risks. However, new compounds and processes could expose employees to previously unknown risks.

4) Monitoring Employees. Technology allows employers to monitor employee activity. This could lead to disputes relating to privacy and standards of production. For example, a reservation clerk might be expected to handle a call within a specified period of time.

## **8. What is the “social environment” and why is it important to labour relations?**

The social environment refers to the values of Canadians relating to work, unions, and employers. The social environment is linked to the political and legal environment because governments will not be able to pass legislation that does not comply with the basic values held by Canadians. For example, right to work laws that have been passed in some states in the U.S. have not been enacted in Canada. Values and attitudes which are particularly relevant to labour relations include the acceptance or rejection of unions as legitimate representatives of employees, whether unions benefit employees, whether employees should

## **9. What do the phrases “federally regulated employer” and “provincially regulated employer” mean and why is the distinction important?**

The provinces have the jurisdiction or authority to pass legislation regulating employment matters for the majority of Canadian employers. These employers are provincially regulated. Provincially regulated employers include firms in manufacturing, retail, education, services and construction. The federal government has the authority to pass legislation regulating employment issues for approximately 10 percent of the Canadian labour force. Federally regulated employers include firms in broadcasting, interprovincial transport, and banking. The distinction between provincially regulated and federally regulated employers is important because there is separate labour relations and employment standards legislation that governs unions and employers in each jurisdiction. The rules regarding a union obtaining the right to represent employees, or other labour relations issues such as the right to strike, vary across jurisdictions. Similarly, employment standards such as minimum vacation can vary between jurisdictions.

## **10. Provide examples from the workplace that distinguish among labour relations legislation, human rights legislation, and employment standards laws in Canada.**

Labour relations legislation regulates the union-management relationship. It covers issues such as how a union gains bargaining rights, how an employer can respond to a union organizing campaign, and the negotiation of a collective agreement.

Human rights legislation covers both union and non-union workplaces and it prohibits discrimination and harassment. The critical duty to accommodate flows from human rights legislation.

Employment standards legislation covers both union and non-union workplaces and it sets out minimum terms of employment including vacations, maternity and parental leave, and the regulation of hours of work.

**11. Use separate examples to distinguish between direct and indirect discrimination that may occur in a unionized work setting.**

Direct discrimination is intentional or known. Example: refusing to hire a person because of their race, religion or gender.

Indirect discrimination is unintentional. It arises where a rule or requirement that appears neutral has an adverse impact on a person protected by human rights legislation. Example: a rule providing that all individuals must be 5' 10" or taller to be hired has an adverse impact on women because this rule will cut out more female applicants. As a result of recent court decisions, the distinction between direct and indirect discrimination is no longer a critical issue. The key point to note is that discrimination can arise unintentionally or even where there is the best of intentions. For example, a rule requiring all employees to work every third Saturday appears to be neutral and fair. However, this rule could be discriminatory for employees who belong to a religion that has Saturday as a religious day of observance. Note that the issue of whether or not a discriminatory rule can be defended on the basis that it is a BFOQ is a separate matter.

**12. Explain and provide an example of the concept of a bona fide occupational requirement (BFOR).**

A BFOR is a discriminatory rule or requirement that an employer is allowed to use because it can be established that all three requirements set out in the *Meiorin* case can be met. That is, the employer can show that:

- 1) the standard was adopted for a purpose rationally connected to the performance of the job;
- 2) the rule or requirement was adopted in an honest and good-faith belief that it was necessary to the fulfillment of a legitimate work-related purpose; and
- 3) the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

An example of a BFOR would be a requirement that truck drivers have the vision required to maintain a license. Note that as part of the duty to accommodate the employer would have to establish that there was no other suitable work for a driver who lost their vision.

**13. Explain what “the duty to accommodate” means and provide an example of an employer meeting this duty.**

The duty to accommodate means that measures to prevent people from being adversely affected by workplace requirements or characteristics on the basis of a prohibited ground of discrimination will have to be adopted if they do not impose an undue hardship. It should be noted that if there is no discrimination there is no duty to accommodate. Examples of an employer meeting this duty are allowing an employee time off to observe a religious day of observance or reducing an employee's hours while they recover from an injury.

**14. Identify labour relations issues that has been or might be affected by the *Charter of Rights and Freedoms*.**

The text referred to the following issues:

- a) Protection against discrimination (expansion of human rights protection).
- b) Protection of collective bargaining. Governments will no longer be able to pass legislation that nullifies collective agreements unless it can be established that the legislation is saved by section 1 or the notwithstanding clause is invoked.
- c) Union dues. The compulsory deduction of union dues has withstood a *Charter* challenge.
- d) Right to organize. In the future the courts may rule that legislation that denies some employees the right to organize is unconstitutional.

**Answers to Discussion Questions**

**1. As a union official would you prefer that the product the employer produces have an elastic or an inelastic demand? Explain.**

A union official would prefer that the product produced have an inelastic demand. An inelastic demand is less responsive to a change in price, in contrast to an elastic demand, which is more price responsive. An inelastic demand would allow the employer to provide a wage increase to employees, and increase the price of the product or service, losing a smaller number of customers than would be the case if the demand for the product was elastic.

**2. Describe one consequence to union-management relations regarding a manufacturing company's decision to globalize its operations beyond current facilities in British Columbia and Ontario.**

Typically these decision will have a negative impact on union-management relations. As companies seek to reduce costs it may mean a movement or creation of jobs to another country. Unions will seek job security for its members.

**3. To what degree does information technology poses a threat to unions. Explain.**

Information technology could be a threat to unions for a number of reasons. Technology makes it easier for employers to communicate with and address employee concerns. This could threaten the union's role as the representative of employees or help an employer respond to employee issues so that a union does not appear necessary. For example, employers could make use of e-mail to survey employee concerns and preferences. Some information technology could eliminate jobs. For example, ATM machines replace bank tellers. Information technology could reduce the skills required for some jobs and lead to employers seeking to reduce or freeze compensation.

**4. A collective agreement confirmed that there would be no discrimination and the union and the employer would comply with human rights legislation. Some employees covered by the collective agreement were provided with paid parking on a random basis and others were not. The cost of parking at the workplace or nearby was \$50 per month. A group of employees who were not provided with parking, all of whom were women, filed a grievance alleging the employer had discriminated against them. If you were a labour relations officer for the employer, how would you respond to this grievance?**

The union has claimed that there is discrimination in this situation. The response would be that there is no discrimination because there has been no differential treatment based upon one of the grounds of discrimination referred to in human rights legislation. Both male and female employees were denied paid parking – the fact that a group consisting of only female employees has filed a complaint does not make this discrimination. Refer to *Bainbridge v. the Queen*, New Brunswick Court of Appeal 2005 CLLC 220-034.

**5. Hodges worked as a child and youth support worker for an association that operated a shelter for women and children. At one time Hodges worked from 8 a.m. to 2:30 p.m. Hodges' son required special attention because he had a major psychiatric disorder and this work schedule allowed her to care for him after school. More children were at the shelter after school, and in order to service them. The employer changed Hodges' hours of work requiring her to work at 11:30am and work until 6:00 p.m. This meant that she could no longer care for her son. Is there any basis on which the union can challenge the employer's change in work hours? What is the legal obligation of the employer and what outcome would you expect in this situation?**

This question is based on *Health Sciences Association of British Columbia v. Campbell River and North Island Transition Society et al.*, 127 LAC (4th) 1. This case was a judicial review of an arbitrator's decision that there was no discrimination.

The union could claim that there is discrimination on the basis of family status. If there is discrimination the employer has a duty to accommodate to the point of undue hardship. It was noted that not every conflict between a job and parental duties will be the basis for a discrimination claim. The court stated:

“The vast majority of cases in which there was a conflict between a work requirement and a family obligation would not ground a prima facie case of discrimination. However, a prima facie case would be made out when a change in a term or condition of employment resulted in serious interference with a substantial parental or other family duty or obligation. In this case, that test had been satisfied. The grievor's son had a major psychiatric disorder, and her attendance to his needs after school was regarded as critical. The change in her hours of work represented a serious interference with the discharge of her parental obligation. The arbitrator erred in not finding a prima facie case of discrimination on the basis of family status.”

In the *Health Sciences Association* case the court referred the case back to the arbitrator to determine if the employer had met its obligation to accommodate the employee.

The key point that this question is illustrating is that the duty to accommodate only arises when it has been established that there is discrimination.

**6. How might certain specific measure to accommodate be an undue hardship for one employer and not for another? Explain.**

Yes, it is possible that measures to accommodate could be an undue hardship for one employer and the same measures would not be an undue hardship for another employer. Although it is difficult to establish cost as the basis for undue hardship, it is more likely that a small employer, or an employer in financial difficulty, would be able to establish cost as an undue hardship. The size of the employer including the number of employees could be a factor. A larger employer, who has more potential replacement employees, would have less difficulty allowing time off to accommodate an employee.

**Comments on Web Research**

The issues identified by students will vary depending on the province and the current political or social justice issues in play at the time. Students should be able to easily identify what these issues are, either from a global, federal or provincial levels. Unions also tend to see diversity as a social justice issue. Typically, these initiatives are in the union's best interest include: these issues also affect the union from a legal perspective, they demonstrate that they have the public and members best interest in mind, and as a recruiting tool for those interested in joining a union.

**Case Incident: A Case of Union Discrimination?**

This case demonstrates the far reaching effect of discrimination in the administration of the collective agreement. This decision provided that the union and the company have a duty to accommodate an employee when the collective agreement becomes a barrier to their requirement to accommodate an employee.

**1. What form of discrimination is seen in the case?**

Indirect discrimination (sometimes referred to as systemic discrimination) involves a rule or requirement that does not appear to discriminate; however, the requirement has an adverse impact on an individual or group protected by human rights legislation. In this case, the union and the company agreed to certain seniority provisions in the collective agreement in good faith and for job related reasons. This issue is whether the requirement has an adverse impact.

**2. What was the “protected ground” under the Code revealed in Mr. Bubb-Clarke’s circumstances?**

The “protect ground” in this case was that Mr. Bubb-Clarke was discriminated against based on his disability.

**3. Based on the case facts, what argument did ATU advance for its inability to change what had already been done for Mr. Bubb-Clarke?**

ATU made the argument that the seniority provisions of the collective agreement was unambiguous, made in good faith, and did not discriminate against Mr. Clarke. They claimed that they did not have the authority to override the provisions of the collective agreement.

**4. As the labour relations manager for the TTC, after initially hearing of Bubb-Clarke's medical diagnosis and also understanding the collective agreement language related to seniority transfer, what steps would you have taken to avoid this situation? Explain why?**

As the labour relations manager you should take the following steps:

- a) Obtain medical confirmation that the employees medical condition made meant he could no longer drive for the TTC.
- b) Meet with the union representatives to discuss the facts of the situation with the intent of obtaining written agreement with the union that the employees full seniority will be placed in the new occupational group.
- c) In the event the union does not agree, transfer the employee and his seniority to the new group and proceed with any potential grievance.

These steps will ensure the company has done all things reasonable to accommodate the employees disability and limit the liability in the event of a human rights complaint.