

They came to bore a tunnel, but were reamed by labour bosses and a human rights tribunal

by John Mortimer

Imagine you're working in another country, don't speak the language, and find yourself in the crossfire between a union (which claims to represent you), a human rights tribunal, a labour board, your employer, and now the courts.

This was the situation for 30 Latin Americans working on the rapid transit tunnel under downtown Vancouver. They were in Canada, along with 70 other internationally based employees, on work permits. Most have left having completed their work.

All worked for SELI Canada - a consortium comprised of Italy's SELI and Montreal-based Lavalin. SELI, formed 60 years ago, is a worldwide specialist in boring tunnels under massive amounts of sediment, rocks and water. Given the nature of this work, SELI takes a portion of its international workforce as well as hiring locals.

SELI's Canadian troubles are unprecedented. Here, the largely European management team and international workforce have been confronted by the in-your-face political games played by organized labour.

In June 2006, the Construction and Specialized Workers Union, Local 1611 (CSWU) unionized the workforce. In August, 2006, the union launched a complaint at the BC Human Rights Tribunal (BCHRT) on "behalf " of the Latin Americans. The union alleged racial discrimination, stating Latin American pay was less than Canadian pay. A similar discrimination complaint was filed at the Labour Relations Board (LRB).

But the union never disclosed that at least 20% of the employees did not want the complaint filed, or that others may never have been fully informed. Employees were not advised of a legal right to opt out of the complaint. Updates in Spanish were spotty at best. Not that it mattered to the union, which claimed that all of them supported the complaint.

Over at the LRB, it turns out the discrimination complaint was unfounded. The LRB found the total pay and benefit packages were very similar in total value - Canadians garnering \$37,400 to \$58,240; the Latin Americans between \$46,556 and \$57,978, including benefits. Complaint dismissed.

During bargaining, the union asked employees for a strike mandate. When SELI Canada and the union couldn't reach a collective agreement, the employer asked that employees be allowed to vote on the final offer. The union was opposed but lost its case at the LRB, told employees to reject the offer and to vote for a strike. The union lost on all counts. Unionized employees voted against a strike and eventually voted 75% in favour of the final offer, which then became their contract. The key pay and benefits provisions were the same ones all workers agreed to in 2006 when hired on to this project. This contract is the basis for the ongoing discrimination hearings at Human Rights.

The Latin Americans - no doubt getting a sense of how disruptive some Canadian unions can be to employee lives - petitioned the union to stop visiting them. Then, in June 2007 the employees moved to get rid of the union. A decertification vote was held within days, but the result is still not known - the union is challenging everything at the Labour Board and in court. But here's a clue as to what the results might be: For that vote to even take place, at least 45% of the employees had

to indicate in writing they no longer wanted the union.

Some of the Latin Americans, lost in this maze of unions, courts and tribunals, came to their employer to complain in the fall of 2006 - stating their opposition to the union's actions. The employer drafted a petition for employees to sign (or not) which was presented to the Human Rights Tribunal. Twenty-one of 30 employees signed it, while at least two expressly did not.

Apparently none of this mattered to the Human Rights Tribunal, which, in November, rejected all employer led arguments, allowed the complaint to proceed and, alarmingly, ruled that employees may not speak directly with SELI! This effectively abrogated their right to opt out of the complaint. The Human Rights Tribunal also let the union use the Europeans (who the union excluded from the bargaining unit during negotiations) instead of the Canadians as the group to compare to.

What's especially hypocritical is that the group of unions funding all this have lobbied hard to keep international workers out of Canada. Now, for those workers who managed to run the union gauntlet and get here anyway, the union continues to take a chunk of their paycheques while thwarting those same workers. The union has been further aided by the tribunal ruling that the petition was obtained by intimidation.

It's not difficult to figure out what's behind all this. In bargaining, the union told SELI it didn't care if its viability as a company was ruined. Organized labour's barrage of conflicting press releases against SELI and the increasingly global economy underscore that these 30 employees are mere pawns in a union war. Add in the paternalistic worldview of the Tribunal and you have employee rights being abrogated.

Some of the Latin Americans found themselves a lawyer and challenged the Human Rights Tribunal's ruling that they could not opt out. Finally faced with employees represented by their own counsel, the Tribunal could no longer hide the truth of the law. With no statutory basis to prevent employees from opting out, the Tribunal invented new law - stunningly concluding that employees did not have an absolute right to opt out - but could only do so by going through an application process, with vague criteria - to be adjudicated by the Tribunal. The employees filled out and filed the invented paperwork, without prejudice to their position that the Tribunal did not have the authority to abrogate their legal rights in this manner. They await a further ruling.

This entire union-leader-friendly maze calls for a simple solution: A portion of union dues should be placed out of reach of the union, in a fund for employees to hire expert legal help to protect their rights. Employees deserve a counterbalance to the interests and power of not only the employer, but also the union.

John Mortimer is president of the Canadian LabourWatch Association - john@labourwatch.com

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