

Labour Rights

Labour and Human Rights are fundamental rights of all workers. One of the labour rights which workers enjoy is that of the withholding of their labour. The withholding of labour is often narrowly conceptualized as taking strike action. It however might be best described as taken a form of protest action.

The withholding of labour can be narrowed down to a break down in the labour relationship that exists between the employer and employees; which generally is as a consequence of a breach or concerns with the application of, or misrepresentation and interpretation of an aspect the Collective Bargaining Agreement. The Collective Bargaining Agreement defines the terms of engagement between the employer and employee, and is inclusive of recruitment, conditions of service, termination, the disciplinary procedures and process.

Where the Collective Bargaining Agreement exists, it is commonplace to have unionized employees, who fall under a bargaining unit. Unionization and the Collective Bargaining Agreement provide employees with the advantage to take industrial action in order to bring attention to their grievances and to settle disputes which they have with the employer. One of the most common disputes relate to that of increases in wages or salaries of employees.

The question of the withholding of the pay of workers who take strike action by the employer has remained a subject of debate for quite some time. The issue of fairness is advanced as the determining factor in this episode. There is the school of thought that workers who withhold their labour, automatically surrender their right to pay for each day of work that has been lost. The flip side to this argument is that workers who take legitimate protest action should not be so penalized. This argument rest on the premise that such should not apply, where the action is supported and approved by the trade union as the representative body of the workers, and where the employer has been served prior notice. This is what is referred to as an official strike.

Practice and precedents in some jurisdictions would show that some private sector employers and government as the largest single employer tend not to

go the route of not paying those workers who have gone on strike for short periods of time; such as a one or two-day strike. It is suspected that this is so within the public sector, where governments recognize the potential power of public sector workers in helping to bring down a government. Whereas politicians are not fools, it does not mean that they too should be taken for granted. It is known that they have the option of going to Parliament to pass legislation to deduct the pay of striking public officers. In all this, they are not unmindful of the use of the withholding labour by workers as a bargaining chip.

It can be argued that it is not unreasonable for employers to defend their right not to pay employees who withhold their labour. Equally so, employees may have a sound argument that they should be paid in the instance where any protest action is justified. This applies where the evidence points to either a breach, the failure to act, or an unjustified action on the part of the employer. It is to be expected that there will ongoing discussion on the merits and demerits of either argument.

The development of a strike fund is the extent to which trade unions could offer a measure of comfort for their members as striking workers. The payment striking workers receive from this fund is important to ensuring that they can continue to meet their basic needs and commitments. With a solid strike fund in place, trade unions are strategically placed to maintain a strong bargaining position, and so place pressure on the employer in any given instance.

The fact that this strengthens the hands of trade unions, is enough to merit a call by some to support the action of employers in deduction the pay of striking or protesting workers. There are those who will go to the extreme to suggest that strikes and protest by workers should be banned. To be even more specific, this call may be targeted at public sector employees, who are classified as employees of the state. Any such suggestion certainly borders on the infringement of the individual right to freedom of association. Further, any embracing of this is nothing short of a blatant disregard for Conventions #87 and #98 the International Labour Organization.

If it is accepted that workers live in a democratic society, then there is no place for any contrary opinion. Politicians who rant and rage when public sector workers go on strike are certainly guilty of allowing their emotions to get the better of them, for mere cheap publicity. If commonsense is to

prevail, it is unlikely that anyone in their right mind would want to act hastily and irrationally in moving the hand that feeds him/her. Politicians who fail to recognize the labour rights of workers, particularly that of withholding their labour, stand guilty of the charge of making a mockery of erasing the memories of the citizens of the country from the ugly features of their colonial past, where freedoms and rights were nonexistent.