

We are pleased to publish the following essay submitted by **Richard Pulgarin**, son of our proud member **Brother Alberto Pulgarin** employed with **Priestly Demolition**

The Right to Strike as a Better Method for Impasse Resolution

During collective bargaining, when there is an inability to reach an agreement by the parties involved, an impasse to the bargaining process occurs resulting in the need for a resolution strategy. Bargaining impasse is mutually harmful to both parties involved but it plays an important role in establishing the seriousness of the position set by the opposing party.

The most common consequences of impasse is the necessity to strike or to reach a binding arbitration. Historically, binding arbitration is mandatory for “essential services” such as policemen and firemen. However, for many unions, binding arbitration is voluntary in place of striking. In order to deliver better methods for unions and their members, a strike is the best option as a last resort for impasse resolution as it prevents the inclusion of a third party, does not waive the right to appeal, and maintains positive effect on bargaining.

In the event of a failure in mediation, a third party arbitrator is presented evidence to make a legally binding decision for both parties that may not reflect the interests of union members. Often, this decision is made by a third party who cannot understand the complexities of the union members roles in relation to their institution. This is exemplified by the 2008 strike of CUPE 3903 for York University contract faculty who fought against a binding arbitration. Instead of risking a conservative settlement made by a third party that did not reflect the interests of union members, a strike was determined to be a better alternative. This kept the bargaining power in the hands of the union rather than outside of it.

Contrary to arbitration, binding arbitration cannot be

appealed to a court of law as the decision is legally binding and enforceable. This means that union members have no choice but to accept the decision, regardless of the interests of both parties. A strike, on the other hand, gives unions power to push for serious issues that would otherwise be ignored by a binding arbitration.

Agreeing to a binding arbitration may result in a negative effect on bargaining as a party will be reluctant to engage in productive mediation if they can expect a conservative outcome from the agreement. Collective bargaining would be very one-sided as a party can always expect an agreement by binding arbitration, consequently resulting in unresolved issues as witnessed by the UofT CUPE 3902 strike of 2015. In this example, CUPE 3902 did not receive new funding for graduate students as argued. Instead, bursaries were agreed to be provided for those eligible. This ultimately results in a repeat of bargaining impasse in the future.

Binding arbitration may not always reflect the interests of the unions and their members which can lead to negative effects and the removal of union power to strike. In conclusion, bargaining impasse resolved by striking as opposed to the use of binding arbitration is more advantageous for unions and their members to deliver better results.

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