

CHAPTER 2

THE ENVIRONMENT

Chapter Overview

The framework for labour relations in Chapter 1 provided a systems approach that included the environment as one of the key components of labour relations. Chapter 2 elaborates the five interrelated components of the environment and how they affect the three key actors in the labour relations system. The effects of the environment on critical issues such as the desire of employees to unionize, the objectives of unions and employers, and the power of unions and employers are considered. Special attention is paid to the legal environment, including human rights legislation. Human rights legislation will have significant implications for the terms and administration of the collective agreement, which are elaborated upon in later chapters.

Chapter Websites

[Canadian Human Rights Commission](#)

Consumer Price Index – Current Information

Consumer Price Index- Historical Information

Fraser Institute

North American Agreement on Labour Co-operation (NAALC)

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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 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 lead to higher compensation. The key changes in the labour market include the following:

- 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:* Increased diversity will mean that employers and unions will be forced to deal with issues such as discrimination, harassment, and accommodation.

e) Non-standard Work: 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.

2. 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.

3. Globalization

Globalization means increased competition for employers and in some cases opportunities in new markets.

4. Trade Liberalization

The reduction of trade barriers means that employers face more competition from foreign producers and poses the threat of some employers moving to a lower wage location. For example, some unions have to deal with the possibility of the employer moving to the US or Mexico. It has been suggested by some that North American Free Trade Agreement (NAFTA) will force employers and unions to be more cooperative and work together to avoid costly adversarial disputes.

5. Deindustrialization

The loss of jobs in the manufacturing sector, where unions have represented a higher proportion of workers, and the increase in jobs in the largely unorganized service sector, pose a challenge to unions.

6. Downsizing

The loss of jobs means that employers and unions will have to deal with job security issues and may place unions on the defensive in contract negotiations.

7. Deregulation

The deregulation of some industries has been a challenge for the employers affected and forced them to find ways to reduce costs and become more competitive. This in turn leads to downward pressure on wages and attempts by employers to contract out.

8. Legacy Costs

Legacy costs, the expenses associated with pensions and health benefits for retired workers, may be a more significant issue in the future.

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

- telework
- privacy issues relating to the monitoring of employees
- communication with employees by the employer through websites, intranets, e-mail
- communication within the union

III 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. Students could be asked to anonymously answer the questions on a Scantron form, 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.

IV 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.

V LEGAL ENVIRONMENT

Labour relations is heavily regulated by the legal environment:

- employment standards legislation provides for minimum terms of employment
- human rights legislation prohibits discrimination and harassment
- 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

Although there is some variation between jurisdictions regarding the grounds of discrimination in human rights legislation, the legislation prohibits discrimination because of marital status, race, and religion in all jurisdictions. Four of the grounds of discrimination are age, disability, family status, and religion.

a) *Age*. At one time in some jurisdictions, age was defined with an upper limit, usually 65, so that the protection against discrimination was lost and mandatory retirement was permissible. Mandatory retirement has recently been abolished in all provinces.

b) *Disability*. Disability is an important ground of discrimination. Disability covers both physical and mental impairments and includes dependence on drugs, alcohol, and other substances.

c) *Family Status*. The possibility of discrimination on the basis of family status when work rules or policies interfere with an employee's obligations relating to the care of children or parents is a developing area. Employers should at least be aware of possible problems, and monitor developments.

d). *Religion*. Employers should be alert to the possibility of discrimination claims on the basis of religion.

The case incident, Safe Passage Toll on page 40 of the text refers to a claim of discrimination on the grounds of religion when an employer implemented a security system that involved biometric scanning of the employee's hand.

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.

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.

The Dyer's Bay School Board case incident on page 41 can be used to illustrate the duty to accommodate.

4. Defence: 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) *Leafleting and other forms of expression.* The incident at the beginning of the chapter involving teachers in British Columbia illustrates how the *Charter* can be used to protect forms of expression by employees.

Answers to Review Questions

1. Discuss 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. How does the dependence of the Canadian economy on exports affect labour relations:

Competitive pressures affect Canadian exporters. Trade practices of other countries and the value of the Canadian dollar are important because employment levels and the ability of employers to pay are affected.

Competitive pressure. Canadian exporters must keep costs, including labour costs, in line with foreign producers.

Foreign trade practices. Exporting firms are affected by the trade practices of other countries. For example, the imposition of tariffs on Canadian softwood lumber after a trade dispute with the United States reduced demand for Canadian lumber products. This in turn led to layoffs and reduced the bargaining power of unions. Similarly the ban on Canadian beef by the United States after the mad cow disease scare affected Canadian exporters.

Value of the Canadian dollar. Canadian exporters are affected by the value of the Canadian dollar. When the dollar declines in value the demand for the products of Canadian exporters increases. When the dollar increases in value the demand for the products of Canadian

exporters decreases. This in turn affects Canadian employers' need for workers and their ability to pay. Recently the rise in the value of the Canadian dollar has been blamed for the loss of thousands of jobs, especially in manufacturing.

3. Distinguish 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.

4. Explain how possible bargaining priorities may differ for the following employee groups: younger employees, older employees, and female employees:

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 employees may also be more concerned with harassment issues, pay equity and employment equity.

5. Outline important features of the labour market that could affect labour relations:

A tight labour market (demand for labour exceeds supply and there are labour shortages) will put upward pressure on wages. A loose labour market (supply for labour exceeds demand and there is a surplus of labour) will put downward pressure on wages. It should be easier for a union to obtain a wage increase in a tight labour market.

The aging workforce and retirement of baby boomers will lead to unions and employers dealing with issues including measures to retain some employees, pensions, and phased retirement.

Younger employees may lead to unions and employers dealing with issues relating to Generation Y such as retention and relationships with baby boomers.

Increased female participation has led to concern over issues including flextime, harassment, day care and employment equity.

Increased diversity means that unions and employers will have to be concerned with discrimination, harassment, and accommodation issues.

6. 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.

7. Describe five (or six) economic trends or issues that might affect labour relation:

The following economic issues and trends have affected labour relations:

- 1) Changes in the Labour Market. An aging workforce, increased female participation, increasing diversity, and an increase in non-standard work including part-time and temporary work affect unions and employers. Preferences of employee groups such as females could affect contract demands by unions and the contents of collective agreements. For example, more collective agreements now address the issue of harassment. The aging population will mean that there is a greater concern with pensions and retirement issues.
- 2) 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.
- 3) Globalization and Trade Liberalization. Globalization and trade liberalization lead to increased competition and economic pressure on unions and employers. Unions have faced the prospect of a wage freeze or wage reductions to avoid the employer moving operations to the United States, Mexico, or elsewhere.
- 4) Deindustrialization. The loss of jobs in the manufacturing sector and the growth of jobs in the service sector places pressure on unions to organize service sector employees.
- 5) 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) 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.

8. What are the implications of NAFTA for unions and employers:

Tariff reductions mean that Canadian companies are not protected from competition from firms in the United States and Mexico. This forces Canadian firms to be more efficient and control labour costs. The employer's ability to increase prices and provide wage increases

may be limited. Canadian producers can threaten to move operations unless unions hold the line on wage demands.

9. 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.

10. Discuss a current example of technological innovation that unions and employers must resolve:

- 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.

11. 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

have the right to strike, and the extent to which government should become involved in labour relations.

12. Provide relevant examples 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.

13. 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.

14. Distinguish between direct and indirect discrimination in terms of human rights, and provide an example of each 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.

15. 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.

16. 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.

17. 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.
- e) Leafleting and other forms of expression. The courts have struck down some employer attempts to prohibit communication and expression by employees.

Answers to Discussion Questions

1. If you were 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. Explain a difference between the work preferences of younger (age 20–30) employees and older (age 55–65) employees:

This question is intended to explore the possibility that younger workers are more concerned with interesting or challenging work and opportunities for advancement, and less concerned with job security.

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. Do you think that your family and friends have a generally positive or negative view of unions? What is the basis for your opinion:

This question is aimed at exploring the experience with and attitudes towards unions. In Chapter 3 the reasons why some employees want a union and others do not are considered. Some students may have a negative attitude because of union dues, political activity of unions, or the notion that unions protect incompetent employees. Others may have more positive views because they see unions as protecting employees and doing work in the community. Some union leaders argue that unions and union leaders are treated negatively in the press and this could be explored here. That is, students could be asked the basis for their opinion and it could be determined if students with negative views are relying on news reports. Conversely, students who have more positive views could be asked the reasons for their opinion.

5. 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.

6. A collective agreement provided that if employees were away from work because of a physical disability the employer would continue to pay their salary for one year and if the employee was away from work because of a mental disability the employer would continue their salary for six months. Are there any problems with this agreement:

The term of the collective agreement is discriminatory. People with a mental disability are disadvantaged. It should be noted that the agreement of the union and the employer to this term in the agreement does not eliminate the human rights issue. Refer to *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 SCR 566.

7. 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.

8. A collective agreement provided that if employees were unable to carry out their regular duties because of illness or injury, they were given access to a rehabilitation committee. The committee searched for alternative employment for the employees for a six-month period. When an employee with a disability was granted access to the committee. The union filed a grievance alleging that the collective agreement provision regarding the six-month limitation on the committee's assistance contravened the employer's duty to accommodate. The union claimed that because the employer had a duty to accommodate there could not be a six-month limit imposed. Does the employer have a duty to accommodate? Explain the outcome you expect in this situation:

This question is based on a decision of the British Columbia Court of Appeal, *British Columbia Government and Service Employees' Union v. British Columbia (Public Service Employee Relations Commission)* 2005 CLLC 2300-015.

The union must establish there was discrimination before the duty to accommodate arises. When determining if there is discrimination a key issue is the comparator group – who should the employees in question be compared to when determining if they have been discriminated against? The arbitration board, and subsequently the Court of Appeal found that the comparison should be made between employees with disabilities who cannot return to their job, but are placed within the six-month period, and those employees who have disabilities who cannot return to their job, but are not placed within the six-month period. That is, the comparator group is not employees without disabilities. Note the provision in the decision of the Court of Appeal, which provides as follows: there is no positive obligation to provide a benefit under equality law, only an obligation not to provide a benefit in a discriminatory manner. An alternative way to state this is as follows: All individuals with disabilities here are being treated in the same fashion. Accordingly, there is no discrimination and no duty to accommodate arises.

9. How many certain specific measures 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.

10. The environment, both external to the work setting and within it, affects many aspects of labour relations, including the items referred to below. For each of the items listed, consider what factors discussed in this chapter could be an influence and what their impact could be:

- a) willingness or desire of employees to join a union
- b) overall rate of union membership

- c) ability or opportunity of employees to join a union**
- d) attitude or approach of employer to a union**
- e) demands made by unions and employers in negotiations**
- f) bargaining power of the union and the employer**
- g) likelihood of a strike or lockout**
- h) content of the collective agreement**

- a) The social environment, including the values of members of the community, could affect this variable. For example, some would argue that it was not by chance that the first Wal-Mart store in Canada to be unionized was situated in Windsor, Ontario. Employees are more familiar with and perhaps supportive of unions in heavily unionized city, in part because of the presence of the auto industry. The economic environment could also be a factor.
- b) Same as a
- c) The political and legal environment could affect this variable. We will see later in Chapter 6 that the rules relating to the establishment of union collective bargaining rights (certification) are more supportive of unions in some provinces. For example, in some jurisdictions a union may be certified without a vote if it establishes a specified level of support by way of signing union membership cards.
- d) This variable could be affected by the economic situation. For example, an economic decline could put pressure on employers forcing them to be more confrontational with a union. In the private sector the values of owners may be a factor. For example, the values and beliefs of the founders of Wal-Mart have been cited as a reason for the organization's opposition to unionization. In the public sector the ideology of the government of the day may affect a government's approach to unions. Some right wing politicians appear to have been less supportive, if not hostile towards unions.
- e) Demands made by unions should be affected by demographics. For example, an aging population leads to concerns relating to pensions. An economic downturn could lead to employer demands for concessions from the union. Technological change could lead to union demands relating to job security and concerns relating to training and safety.
- f) The economy could affect the bargaining power of the union and/or the employer. In an economic downturn the bargaining power of the union may be reduced. Especially in the public sector, the social environment, referring to the attitudes and beliefs of the public may be a factor. A union that is making demands that are supported by the public, for example improvements in health care through additional staffing, will be in a stronger bargaining position.
- g) The economic environment will be linked to the likelihood of a strike or lockout. Generally strikes have diminished in periods of economic slowdown.
- h) This variable could be affected by the technological environment. Technological change or the threat of such change could be linked to job security provisions. Demographics could be a factor. A workplace that is comprised of entirely female employees is more likely to have a collective agreement that is reflective of societal concerns relating to equity, harassment, time off for childcare etc.

Case Incident: Safe Passage Toll

This incident is based upon *407 ETR Concession Co. and CAW Canada, Local 414*. The purpose of the incident is to illustrate the concepts of indirect discrimination and the employer's duty to accommodate.

1. Is there any discrimination in this situation? If so, what type of discrimination is involved:

There is discrimination on the grounds of religion in this situation. The Supreme Court of Canada has held that a religious objection does not have to be based upon the established tenants of a faith or church - it is only necessary for the objector to prove that their beliefs are sincerely held and are connected to a religious faith. (*Syndicate North crest v. Amselem*). This situation illustrates indirect discrimination. An apparently neutral rule, the requirement for biometric scanning, is conflicting with a prohibited ground of discrimination - religion.

2. What is the obligation of the employer:

The employer has an obligation to accommodate employees to the point of undue hardship.

3. If this case proceeded to a hearing explain the outcome you expect:

If this case went to hearing the critical issue would be whether the employer had met its duty to accommodate. In the case this situation is based on the employer argued that the accommodation of the employees would require it to abandon the biometric scanning system and that this would impose an undue hardship. The arbitrator found that the employer failed to meet its duty to accommodate because it did not investigate alternative measures. Ultimately it was decided that employees could be accommodated without undue hardship through measures such as moving a fax machine to the area of their work, having other employees come to the front counter to escort customers to other areas of the building if necessary, and allowing the employees to use the swipe card and password system instead of the biometric scanning. It was noted that the employer did attempt to modify the technology; however, the arbitrator held that this was not sufficient.

Case Incident: Dyer's Bay School Board**Questions****1. Is there discrimination in this situation:**

This situation may be considered as an unintentional or indirect discrimination on part of employer. Lifting pails that contain five gallons of cleaner altogether as heavy pails as 22 kilogram could be unsafe and may even cause ergonomic issues to the employees. It is specifically discriminative for women cleaners as according to the test ratio, more women failed the test than men. The employers must take onus to itself and can resolve the issue by the following two ways:

1. Dividing the cleaning items into the smaller boxes hence making the weight lighter and easier for them to carry the containers for the cleaning purposes.
2. Employers can also resolve this issue by providing essential training to all the candidates before taking their tests for employment.

2. Assume that you are the arbitrator in this situation. Outline what your decision would be and provide reasons for your decision:

Although this is a simple case, some students may not be familiar with the concept of indirect termination, and an employer did take a case like this one to arbitration. This incident can also be used to show that an understanding of the principles in the *Meiorin* case is critical.

The lifting requirement is discriminatory. Although the employer does not intend to discriminate there is indirect discrimination against females.

Once it is established the requirement is discriminatory the onus shifts to the employer to justify it as a BFOQ. In order to justify the requirement as a BFOQ the employer will have to show that all three parts of the test in the *Meiorin* case are met. The employer can meet the first two requirements of *Meiorin*; however, it cannot meet the third. The employer can accommodate employees without undue hardship through measures such as putting the boxes of paper in another location, buying smaller boxes, and/or having other staff do the lifting if necessary. Although some of these measures may cost the employer additional money, the additional cost is not enough to amount to an undue hardship.

An order would be made directing the employer to delete the job requirement and hire the three candidates.

Refer to *Toronto District School Board and C.U.P.E Local 4400*, 120 LAC (4th) 395.