

UNIONIZATION – THE EXPERIENCE OF TEN FAMILY HEALTH TEAMS

Summary

Leaders of inter-professional team-based primary health care providers in Ontario are facing many challenges and opportunities as the sector undergoes significant transformation. One of these challenges is managing health human resources; specifically, addressing the potential for unionization of the sector's workforce.

To support its members and consider the impact of unionization, AFHTO has looked at the experience of 10 members and documented what they went through in the processes of union certification, negotiation, and managing in a unionized environment.

The case study below is a consolidation of the learnings and advice of the 10 FHTs. Names of the FHTs have been kept anonymous due to the sensitive nature of the subject.

Advice highlights include:

- **Be prepared.** Well before your organization ever reaches the stage of a unionization drive, do your best to:
 - a. Minimize susceptibility to union organizing efforts. For example, maintain strong HR policies and practices, deal with troublesome HR issues, and be aware of and respond to employee concerns. Determine what staff positions you would want to keep out of the bargaining unit. You will need to provide solid rationale for this based on position responsibilities (e.g. supervisory role, responsibility for confidential information such as human resources). You may need to revise job descriptions now.
 - b. Prepare to respond to an application for certification. Select a labour lawyer/HR specialist that you would want to work with. Understand the process and be ready to respond; you will not have much time once the certification process is underway. Begin Board discussions early (now); begin to acquire basic labour relations knowledge. Do some Board training; invite a guest speaker; provide materials to read; talk to other FHTs/NPLCs/primary care practices.
 - c. Become knowledgeable about management's rights. Review other collective bargaining agreements; speak with other unionized FHTs/NPLCs/primary care providers.
- **Act quickly.** If you find your organization facing an application for certification, inform the Board and senior leadership, engage human resources expertise (either a management side labour lawyer or human resources specialist) to advise on the organization's response, and plan your strategy.
- **Don't take it personally.** Take note that even having positive, collaborative workplaces cannot guarantee that staff won't decide to pursue union certification.

Above all, recognize that a unionized workplace is just a different framework for employer/employee relations; a unionized environment can have benefits for the employer and can be an effective, collaborative setting.

For many primary health care teams, this is new and uncharted territory. Most Executive Directors will require ongoing support from HR specialists. Some primary care teams that are attached to hospitals may receive this support from the hospital; however all teams will benefit from learning from one another, sharing information, and supporting one another. The intent of this document is to begin that conversation.

Background

About 25 FHTs across the province have unionized workplaces. Typically, small workplaces are much easier to unionize than larger, more complex organizations, making it possible that other FHTs/NPLCs will become unionized in future. This document describes the experiences of 10 unionized FHTs prior to union organizing, throughout certification, during negotiation of the collective agreement and working under the collective agreement.

It is very important that employers understand the legal requirements and prohibitions under law before encountering a union drive. Employees have the right under labour legislation to join and participate in a trade union of their choice (where the majority of employees agree). In Canada, labour legislation is primarily a provincial responsibility with each province having its own legislation to govern workers and employers. [Click here](#) to link to Ontario's *Labour Relations Act, 1995*.

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In general, the purpose of the *Labour Relations Act* "...is to facilitate the relationship between an employer, its employees, and a trade union, most notably during union organizing, certification, collective agreement negotiation, strikes and lockouts, and dispute resolution.

*The legislation also typically confers penalties on the party that breaches its obligations under the legislation, particularly if the party commits an unfair labour practice or acts discriminatory or in bad faith towards employees who are attempting to exercise their rights under the legislation."*¹

The lessons learned from these 10 FHTs will assist other FHTs/NPLCs as they contemplate the potential for, and the implications of, unionization in their workplaces. Because of the sensitive nature of some of the information that was provided to us, we have not identified the FHTs by name. However, if any primary health care teams are interested in speaking directly to the Executive Directors or Boards of these FHTs, AFHTO will facilitate an introduction.

Lessons Learned – The Perspective of Management

1. Before a Union Drive

Union drives can be motivated by many factors. In the FHT sector, some unions were simply inherited from prior work settings (e.g. hospitals or affiliated primary care organizations). Others arose in a community culture and history of organized labour.

We invested a lot of time in team building but in the end this didn't matter. The issue was more fundamental – it was wages. Staff felt that they were not making enough money and were continually being asked to work more and harder.

In our surveyed FHTs, new union drives were also motivated by one or more the following factors:

- Desire for improved wages and benefits
- Desire for enhanced pensions (specifically HOOPP)
- The belief that a union would lead to improved wages and benefits
- Weak leadership and/or governance, leading to a toxic, unhappy work environment
- A dysfunctional team with lack of trust
- Low staff morale

- A change in workplace culture from one that was small and friendly to a workplace that is larger, more formal, more standardized, less flexible
- A change in workplace policies to ones that were deemed by staff to be less favourable to working conditions

In general, staff typically want to ensure they have security (financial and job security), protection, safety and power (engagement).

In the absence of, or prior to facing, a union drive, management should consider a number of mitigation strategies that will help ensure that the FHT is a) minimizing susceptibility to union organizing efforts, b) prepared to respond to a certification vote, and c) knowledgeable about management's rights. This would include such practices as:

- Ensure that the FHT has strong HR practices in place and that it is conducting regular performance reviews. Deal proactively with under-performing employees through performance evaluation and/or termination (if justified), as they can often contribute to low morale in the workplace. Also, it will be much more challenging to do so under a collective bargaining agreement.
- Be aware of any potential management issues or practices that may cause unrest and be open and transparent about addressing them. If physician or any staff behaviour is causing strife, deal with it proactively. If there is any bullying or harassment occurring in your workplace, use your policies and procedures to deal with it so that it does not become a reason for conflict.
- Establish an effective complaint and problem-solving procedure. Not responding adequately to an employee who has raised a concern can lead to the employee turning elsewhere to have the problem resolved.
- Monitor possible indicators of staff

Leadership is key to the success of an organization, and is critical in the instance of an organization that is facing unionization. The leaders must depersonalize this effort; it is not about the individuals. The leaders must be able to make things positive.

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dissatisfaction like high absenteeism rates and high staff turnover. Conduct exit interviews to find out why your employees are leaving.

- Review your policies and procedures annually with the Board with a view to ensuring best practice, and fair and equitable treatment. Review compensation policy and award salary and benefit increases to be sure that any increases are managed in a fair and equitable way.
- Ensure your Board has some basic labour relations knowledge. Discuss labour relations as part of your risk management, governance, and strategic planning conversations. A mixed governance board may offer some advantages in the face of a union drive, including the ability to have human resources expertise on your board and the potential to better separate the FHT from the FHO in defining staff positions that will be included in the bargaining unit.
- Develop your supervisors. Make sure that your supervisory team has good conflict resolution and problem solving skills and is trained in positive leadership techniques.
- Maintain open and positive communication with staff. Provide information and updates on salary reviews, AFHTO and the organization's advocacy, primary care reform etc.
- Be proactive. Gauge the possibility of unionization and be prepared. Listen to every employee. Deal with problems and disgruntled employees immediately.

Feelings of betrayal are typical. The ED needs to manage the emotion and feelings of betrayal in the Board and physician group. This is great risk to the organization

- Learn the steps in a union drive process; what management can and cannot do under law.
- Stay calm. This can be a positive opportunity. A unionized environment provides a rulebook for

employees and management, but your leadership skills are still fundamental to managing a professional, inter-disciplinary team.

- It is a different way of managing and communicating, but done properly, it can work.

- Perspective is important; think of unionization not as a threat, but rather it is a group of employees trying to define what they need in the organization.
- Play to your strengths; remind staff that the FHT/NPLC environment is a very good working environment. No shift work, no union dues, and in many cases good benefit plans. Ensure that staff understand you are always advocating for better wages.

2. Certification

a. Definition

Union certification is the process of gathering employee votes for the purpose of allowing a union to represent the group in negotiating a collective agreement with the employer.

In Ontario, the certification process follows a number of steps:

- Employees determine which union they want to represent them and they ask that union to provide them with union cards for signature
- Employees sign (or not) these cards and present them back to the union
- If more than 40% of employees have signed cards, the Ontario Labour Relations Board will hold a vote (of all employees) to determine whether the employees want a union to represent them
- If the majority (50% +1) of workers who voted vote in favour of a union, the union is certified
- The union then serves notice to the employer that it intends to negotiate a collective agreement between the employees and the corporation

b. Know What You Can and Can't Do/Say

Communication with employees can be difficult to navigate during a union drive. As the employer, there are specific legal requirements with respect to what you can and cannot do and say in the presence of a union drive. Employers must be cognizant of these rules, and respect the right of employees to free choice in voting.

Educate your Board about what they can and cannot say during a union drive. This is particularly important in circumstances where some of your physicians are also Board members. They need to remember that they are governors first and physicians second.

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“You have to start thinking strategically as quickly as possible. This is difficult due to the emotional upheaval and because the organization was caught unaware with no idea the certification process was underway. The union will want everyone – there will be intimidation and gamesmanship. You will need to be clear from the outset which positions you want excluded; and assess whether you are prepared to challenge the positions using the legal criteria.”

There are very tight timelines between the time the employer becomes aware that there will be a certification vote and the actual vote date. Many of the unionized FHTs described being blind-sided and caught off guard by the process. They were totally unaware that a union organizing campaign was underway. This meant that they had very little time to overcome the shock, engage a labour lawyer, deliver the required documents in response

to an application for certification, inform the Board of Directors and senior leadership, and plan a strategy.

c. What Unions are Present in the FHTs and Who Do They Represent?

“ONA uses hospital agreements as the benchmark, and looks for salary parity with hospital nurses. This is impossible for FHTs. Our nursing salaries are always over budget.”

Employees may approach any union to represent them. The union selected may or may not be familiar with the primary health care sector in general, with FHTs and NPLCs in particular, or with the health care sector more broadly. This can make negotiations challenging, as

there are unique characteristics of Family Health Teams that make it difficult to use the terms and conditions of other collective bargaining agreements as comparators. For example, a union attempt to achieve wage parity between FHT/NPLC clinicians and hospital clinicians is inappropriate given the differences in job responsibilities and working conditions and the restrictions of the Ministry’s budget ceilings.

Unions may represent broad categories of staff, from clerical and administrative staff to professional staff. In the experience of the FHTs surveyed, sometimes staff categories are each represented by different

bargaining units or different unions, and sometimes they are combined.

The collective bargaining unit in some FHTs also includes staff (IHPs and clerical/administrative) that are employed by the physician group. This adds a layer of complexity to the negotiating process, as the physician group will be required to respect all of the same terms and conditions of the Collective agreement as the FHT.

In the 10 FHTs that we surveyed the following unions were represented:

- ONA – Ontario Nurses Association
- OPSEU – Ontario Public Service Employees Union
- UNIFOR – The coming together of the Canadian Auto Workers union and the Communications, Energy and Paperworkers Union of Canada
- CUPE – Canadian Union of Public Employees
- SEIU - Services Employees International Union Healthcare
- USW – United Steel Workers

As mentioned above, there are very tight timelines between the time the employer becomes aware that there will be a certification vote and the actual vote date.

The Toronto law firm Baker and McKenzie has published an informative blog on the certification process and employer rights. [Click here](#) for a description of the certification process and how employers can be better prepared for a union drive. And [click here](#) to learn what the employer can and cannot do in the face of a union certification drive.

“Your immediate tasks when confronted with an application for certification are to inform the Board and senior leadership and engage human resources expertise (either a management side labour lawyer or human resources specialist) to advise on the organization’s response to an application for certification and plan a strategy.”

3. Collective Bargaining

a. Definition

Collective bargaining is the process of negotiating the terms and conditions of employment for the

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specific employee group (bargaining unit). Typically the union and FHT management will each assemble a “bargaining committee” consisting of several key

We had a labour lawyer and a governance lawyer meet with the Board to explain the risks, the process, what policies should be put in place. The role of the community members on the board has been critical – they have provided extensive expertise that the physicians don’t have.

individuals who put together the terms and conditions of employment; the employees then vote on whether to accept the proposed collective agreement or not. The employer must also approve the proposed agreement.

The Board of Directors provides the management bargaining committee with

a mandate, providing some flexibility and judgment, and outlining the terms and conditions that would be acceptable to the Board.

The process of collective bargaining can be long, drawn out and exhausting. A recommendation from one of the FHTs is to consider having an extra person on your bargaining team who does not attend every meeting, but who can step in with fresh eyes and energy at the end of the process to review the proposed agreement.

The process can be physically and mentally draining. It can become very personal, and can test the trust and friendships between employees, managers and the physician group.

b. What Supports/Resources Do You Need?

All of the FHTs we surveyed recommended the use of a management-side labour lawyer in the face of a union drive and in all negotiations and legal processes for the first negotiated agreement. Some FHTs used a human resources specialist with labour relations expertise to develop knowledge and strategy, and involved legal expertise for specific tasks such as reviewing proposed language in a collective bargaining agreement. In some instances, affiliation with a hospital provided significant benefits, including more sophisticated labour relations/human resources expertise and experience, and importantly, funding of legal costs. However, there can be a downside in

having the hospital control the bargaining process in that the primary care provider may have less involvement and control over the subsequent content of the Collective Bargaining Agreement (CBA).

Executive Directors identified that the emotional and practical support of other executive directors who have been through the process was invaluable. It can be an isolating, challenging journey, and shared experience is valuable.

Additional supportive factors include:

- A supportive Board of Directors and strong governance
- Being transparent with financial information; ensuring that employees understand the FHT budget and Ministry funding constraints
- Good HR support on an ongoing basis
- Solid HR practices - policies and procedures, well defined job descriptions (especially with respect to supervisory roles as this can become a factor in exclusion from the bargaining unit)

One of the FHTs we surveyed recommended preparing a binder with all of the information you might need in negotiation and having it as reference in all negotiation meetings (e.g. MOHLTC agreement, budget, other CBAs, list of things you are willing to negotiate). In addition, developing a list of conditions you are prepared to negotiate and sticking to it was felt to be a good strategy.

c. What to Include, What Not to Include in Your CBA

The collective agreement becomes the legal employment contract with the unionized group of employees. It dictates the terms and conditions of employment, and all of the “rules” that guide both employees and the employer. Accordingly, it is essential that the collective agreement is clear and that it includes all of the employment terms that will support a productive workplace. Grey areas can lead to conflict and potentially grievances. Legal support is critical to developing an effective collective bargaining agreement.

Many of the unions post their collective bargaining agreements (CBA) online where they can be viewed

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and used as a comparator with other agreements. All of the FHTs we surveyed agreed to share their experience with other FHT Executive Directors, including, where possible, the sharing of CBAs. [Click here](#) to see ONA collective bargaining agreements for some FHTs and other primary care models.

One FHT suggested including language that specifies how many days the union has to make sure staff all have a copy of the CBA and the time frame for the union to establish a labour/management committee. Otherwise these things will drag on because, once the CBA is signed, the union is ready to move on.

Collective bargaining agreements outline the “employer/management rights”. It is particularly important for Executive Directors and Boards to ensure that these rights are clear and complete. Employer/management rights typically include such things as the right to schedule work, define hours of work, determine staffing levels, address performance issues, etc. Some management rights are inherent (e.g. the organization’s right to appoint a Board of Directors); other rights may need to be specifically identified in the Collective Bargaining Agreement (e.g. the right to discipline employees without prior consent of the union, the right of the employer to file a policy grievance). It is important to have legal advice in negotiating your CBA to ensure that all of the management rights the employer requires to operate effectively are included in the Agreement.

4. Dispute Resolution

Under a collective bargaining agreement, there will be a well-defined dispute resolution process. (Note: this process will supersede any other dispute resolution policy that the organization has in place). Staff have the right to “grieve” anything they believe contravenes the terms of the CBA. The union will usually also have the right to present a “policy grievance” related to general contravention of a specific policy or provision of the agreement. The employer also has the right to file a grievance, and this provision should be included as a management right in the collective bargaining agreement.

Settling grievances can be a lengthy, costly process and may require legal assistance.

The collective bargaining agreement itself will have a termination date; generally, CBAs run for 2 – 3 years and then must be re-negotiated. It is critically important to get the first CBA “right”, as it may be difficult to change terms and conditions once they have been included in the first agreement.

If agreeing on terms and conditions of a CBA proves impossible, the union will have a right to withhold services, or to strike. Services in this sector are not considered essential services under provincial law, and accordingly there may be threats of service disruption to patients. The FHT should always have a strike contingency plan that includes the handling of potential disruption to service. This is particularly important to FHTs since they have so little to give in negotiation (i.e. funding and budget are established by MOHLTC). When you have nothing to give, talks may reach an impasse more quickly, and a strike vote could follow. Several of the FHTs we interviewed have experienced challenging negotiations and the need to prepare for a labour disruption. In one of the smaller FHTs, the Executive Director was required to train in all aspects of the front line clerical and administrative roles to ensure that the physicians would be able to continue to see their patients.

5. Working Under the Collective Agreement

a. Management/Staff Relationships

The FHTs surveyed all indicated that there are benefits of working under a collective agreement including

- Control over scheduling
- One employment contract vs. many
- Clarity around working conditions, expectations, policy, employer and employee rights and obligations
- There is now one contract to guide HR policies rather than having many people asking for different exceptions. This is very helpful.
- Staff can’t go to physicians or Board anymore for special consideration. There can be no end runs.

There are some positive effects of having a union. There is clarity; there is a guidebook. Decisions are sometimes easier to make, and ‘I respect your collective agreement’ is a useful position to be able to take.

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There can also be challenges to working under a collective agreement

- Threats to the ability to provide service (work stoppages and strikes)
- Threats to financial viability through awards of wage increases or cost of legal services
- Loss of flexibility
- Loss of collaborative culture
- Arduous grievance process

Of the challenges, the FHTs surveyed spoke most about the change to the organizational culture that can result with the introduction of a union. The union,

Staff are also struggling with the change. It is still too early to tell if staff will feel that unionization has been worth it. Staff has lost flexibility and this is coming home to roost.

in a number of FHTs, has had the impact of formalizing a workplace that was previously felt to be nimble, flexible and friendly.

Other FHTs that have been unionized for a longer period, have not felt the presence of

a union has hampered their ability to be responsive and collaborative. Teamwork has been good, and the relationship between the union and management has been positive and productive.

One of the unintended results has been that unionization has cemented the FHT/FHO relationship. The FHO sees that the FHT Board and management are looking out for them.

However, the period of moving to the 'new normal' is one that can be challenging, in large part because all parties must set aside personal feelings of betrayal or hurt, and move to establish a new collaborative, respectful working relationship between staff and management.

b. Union/Management Relationships

Respect is key to a successful relationship with your union(s). Some Executive Directors found that the unions were less than honest with staff about the benefits they would achieve by unionizing. And some staff were surprised at the end of the process by some of the new "restrictions" imposed by the CBA. However, once certified, it is the Executive Director's

role to overcome any feelings of rancour and reach out to the union and individual employees to foster open communication.

Learn how to work with your union steward; they are the first level of representation for the employees who are represented by a union. The best practice is to work with the union steward as though he/she is an extra set of eyes and ears for you — develop a good working relationship, make every effort to communicate often and a lot of information; used effectively, the union steward can be a helpful ally.

The Ministry of Labour conducts very helpful programs and workshops about union/management relationships. [Click here](#) for a description of what is offered.

c. Other Considerations

i. Cost: There is most definitely a cost associated with managing in a unionized environment. There are up front legal and/or HR costs related to negotiating the first collective agreement. Subsequently, there are costs for ongoing legal and human resources support for handling grievances and negotiating new contracts.

Remember that the collective agreement is reciprocal – the rules are there for management's benefit as well as staff's.

The Ministry has been inconsistent in its approach to funding legal costs related to FHT unionization. Several FHTs received additional funding from the Ministry for legal costs, while most did not. The Ministry has, however, approved budget reallocations to cover legal fees.

The Ministry has not provided any additional funding to cover the provisions of a collective bargaining agreement. This has meant, for one FHT whose collective bargaining agreement contains salary bands that are greater than the previous Ministry-approved bands for FHTs, that the FHT has had to reduce its approved staffing complement, and request Ministry approval to use funds from vacant position(s) to cover any salary shortfall as a result of the collective bargaining agreement.

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ii. Workload for Executive Director: Managing the organization through a certification process is usually time-consuming and emotionally draining. The day-to-day work must continue. This is an intense time, with many demands and a need for strong, clear leadership.

iii. Pay Equity: It is important to complete your pay equity plan – it is a statutory requirement and the union will ask for it. The Pay Equity plan overrides any pay bands the Ministry defines. [Click here](#) to link to AFHTO's information on Pay Equity and [click here](#) for a guide to interpreting Ontario's Pay Equity Act.

Final Thoughts

This is a time of significant change for primary care models and inter-professional teams in Ontario. There is a much discontent in the sector related to salaries; there have not been salary increases in a number of years, and there are large gaps between salaries in team-based primary care models and comparable positions in other settings. FHT Executive Directors have expressed their concern that FHT staff have been left behind; this may serve as motivation for staff to request union representation. The

salary increases announced in the 2016 Ontario Budget may have a positive effect on staff morale and decrease the susceptibility of FHTs to unionization.

The process of negotiating a collective bargaining agreement and managing staff in a unionized work place, requires a level of sophistication in human resources management that many primary care teams don't possess. Executive Directors and Boards will need to consider how best to acquire the knowledge and expertise they need to effectively navigate the labour relations component of human resources management.

Changes in the health care sector will undoubtedly have an impact on FHTs and NPLCs. As leaders and managers, we need to be thinking about and planning for the future. For example, voluntary integrations under LHIN legislation in LHIN and LHIN sub-regions may be challenging in circumstances where one of the organizations is unionized while others are not. In these situations, integration may be a stimulus for further unionization.

FHTs need to be proactive. It feels like we are just playing catch-up. As we become larger, more sophisticated, more complex, we are ripe for unionization. We need to get out in front of this.