



The Brief

Vol. 5 No. 2

A project of the NB Media Co-op

October 2013

nbmediacoop.org

What if Ma and Pa mistreat their workers?

Education and solidarity needed to help workers exercise their rights



Fired by a union-busting boss, the workers of Hot and Crusty Bakery in New York City occupied the closed bakery and held a sidewalk picket for over 50 days—forcing the owner to cede to their demands, which included the reopening of the bakery, rehiring of all the workers and recognition of their newly formed union. Check out an upcoming film about the workers' victory, *The Hands That Feeds*, at: thehandthatfeedsfilm.com. Photo by Laundry Workers Center.

By GARY HEATHCOTE

Recently, while patronizing an eatery in the Fredericton region, I was reminded that one should not assume that locally-owned small businesses are necessarily more ethical in their labour practices than large corporate chains or franchise operations. A business may present itself as a family enterprise, serving its community, but Ma and Pa's concept of family may be decidedly dysfunctional, and they may not treat their employees with fairness, dignity and respect.

From independent sources, I learned that tips intended for the wait staff are hoarded by the manager of this restaurant. During high volume shifts, the manager pockets hundreds of dollars of tips, dispensing miserly portions to employees, usually only \$5 or \$10. Only when the manager is absent are wait staff free to share their tips equitably and fairly with each other and the kitchen help. Sadly, these workers assume that such skimming of tips is within the bounds of managerial privilege. As complaints about other workplace issues have been met with cutbacks in hours, and appeals to the owner about the manager's unkind treatment and greed have been met with disinterest and ignored, morale is in the dumpster as staff feel they are powerless to change their work environment.

We probably all have friends and family members who might shrug at this and say, well, life is unfair and these workers are free to leave and seek employment elsewhere. But this blinkered view misses an important point: What management (and ownership, through complicity) is practicing at this restaurant is unlawful, under statute of the New Brunswick Employment Standards Act (NBESA). This Act includes an explicit statement that tips and gratuities are "the property of the employee to whom or for whom they are given, and shall not be withheld by the employer or treated by the employer as wages." Elsewhere, the Act states that an employer may adopt a practice where tips and gratuities are pooled, but this can only be done when employees agree to such sharing, and this practice "does not give the employer a proprietary interest in the tips and gratuities."

Since employees at this restaurant are unaware that their mistreatment is actually unlawful, some key questions are raised: 1. Are New Brunswick wage workers who earn tips and gratuities generally unaware of their protection under law from such abuse? 2. Once awareness is achieved, can employees file an actionable complaint against unlawful management practices, without fear of retaliation or loss of job? 3. And finally, how widespread is such unlawful management practice in New Brunswick?

1. There is good reason to think that provincial workers who rely on tips and gratuities may be generally unaware of their protection under the NBESA, given that employers are not required to post any information about tip skimming or tipping out being unlawful. Under the Act, only regulations about minimum wage are required to be posted in a prominent location in the workplace. Since this Act was passed into law 30 years ago (1983), and provisions banning worker abuse are not required to be posted, it is unlikely that a largely unorganized, minimum wage earning workforce would be generally aware of

provisions that ban such exploitation.

2. Happily, there are indeed three ways in which an aggrieved employee can file a complaint under the NBESA. The first is to file an electronic complaint at www.gnb.ca/labour, and click on the Employment Standards Online Complaint Form. The complaint can be kept confidential by selecting "No" to the first item on the form, which is Permission. The second way is to request a paper complaint form by writing to the Department of Post-Secondary Education, Training and Labour, Employment Standards Branch, P.O. Box 6000, Fredericton NB E3B 5H1, or phoning 1-888-452-2687. The third way is to visit the nearest NB Employment Standards Branch and speak with an officer. Regional offices of this government branch are located in Bathurst (275

Main St.), Dieppe (200 Champlain St.), Edmundston (121 rue de l'Église), Fredericton (470 York St.), and Saint John (1 Agar Place).

3. While the answer to this question is not known, such unlawful practice could well be widespread, cloaked in silence resulting from employees not knowing about protective sections of the NBESA. More is known about the prevalence of tip skimming in jurisdictions where there is no protection under the law, such as Ontario. There, a common food industry practice is that managers and owners take "tip outs", a percentage of the tips, to supplement their own wages. Ontario MPP Michael Prue is presently making a third attempt to outlaw such practices, and his bill applies not only to restaurant employees but to anyone who relies on tips for their livelihood, such as hairdressers, chambermaids, and part-time taxi drivers.

New Brunswick, along with Prince Edward Island and Quebec, is one of three provinces in Canada that has a law banning tip and gratuity exploitation by employers. And while this speaks well of past New Brunswick legislators, tip skimming in this province continues (law or no law), probably for the reasons suggested. Surely, a step in the right direction would be to enact an amendment to the NBESA, requiring employers to post information about the illegality of tip skimming and tipping out in all service establishments staffed by workers reliant on tips.

Further, we can all do our part to help: Talk with your waitress, hairdresser or other service worker during appropriate moments. Ask them how they like working there, and if management treats them fairly. Assure them that you have an interest in knowing that when you tip in appreciation of good service, that the tip will go to those who deserve it. And if that does not happen at their place of work, spill these beans and let them know that they don't have to take it anymore!

Gary Heathcote is a friendly troublemaker and retired anthropologist living in Fredericton.

Have you experienced wage theft or other wrongful treatment from your employer? The Fredericton Industrial Workers of the World (IWW) want to stop wage theft. The IWW is a union open to all workers, whether or not they have representation rights in your workplace. IWW organizes the worker, not the job, recognizing that unionism is not about government certification or employer recognition but about workers coming together to address common concerns. Sometimes this means striking or signing a contract. Sometimes it means refusing to work with unsafe equipment. Sometimes it means agitating around particular issues or grievances in a specific workplace, or across an industry. Contact the Fredericton IWW at frederictoniww@riseup.net

Reducing poverty is fashionable where equality is unimaginable

Anti-poverty group hammers Alward's poverty reduction plan

By TRACY GLYNN

Fredericton - An anti-poverty group says the New Brunswick Alward government's poverty reduction plan will not alleviate poverty. The government renewed its poverty reduction plan on August 26th, pointing to 150 community initiatives that the plan is funding across the province.

The former Graham Liberal government launched the Poverty Reduction Plan in late 2008 and created the Economic and Social Inclusion Corporation tasked to "develop, oversee, coordinate and implement initiatives to reduce poverty and assist thousands of New Brunswickers to become more self-sufficient."

"The community initiatives are not addressing income poverty, which are two of the three key objectives of the Poverty Reduction Plan. If the Alward government was really serious about reducing poverty it would immediately increase the minimum wage and social assistance rates so people can at least live with some level of dignity," says Linda McCaustlin who struggles with poverty herself and co-chairs one of the province's largest and most vocal anti-poverty groups, the Common Front for Social Justice.

The minimum wage and social assistance rates in New Brunswick are among the lowest in Canada. Minimum wage in New Brunswick is \$10.00 per hour but not indexed to the cost of living. A social assistance cheque for a single person deemed to be "employable" in a province where jobs are scarce is \$537 per month. A single mother with one child receives a maximum of \$827 per month in welfare. Next year, single mothers on welfare can hope to receive \$885 per month. Social Development Minister Madeleine Dubé called the decision to increase social assistance rates by 4% this fall and by 3% next spring a "huge step" for people living in poverty.

During the launch of the Poverty Reduction Plan, 38,986 residents in New Brunswick depended on social assistance to survive. Five years later, in 2013, 39,202 residents depend on social assistance to survive, an increase of 216 persons.

Beyond higher minimum wage and social assistance rates, the Common Front is calling for restoration of unemployment compensation. From 2007 to 2012, 11,000 more workers joined the ranks of the unemployed, bringing the total to 40,000. The provincial unemployment rate today is 10.7 %.

A Fredericton food bank employee who wishes to remain anonymous says she has noticed an increase in food bank users and many of those new users are people who cannot find jobs and are not able to access Employment Insurance.

Between 2008 and 2012, the number of food bank clients in New Brunswick rose by 24.8% in our province. More than 19,524 individuals received help from food banks in March 2012. The Common Front points out that one third of those who rely on food banks in the province are children.

Established on a temporary basis in the late 1990s, food banks and soup kitchens have become a permanent fixture in this province with the numbers of their clientele increasing, according to Jean-Claude Basque, the other co-chair of the Common Front.

"Food bank usage is an... *(continued on page 2)*



George Vair, long-time Saint John labour activist and author of *The Struggle Against Wage Controls: The Saint John Story, 1975-1976*, speaking at the unveiling of the April 28th monument in Saint John that was erected in remembrance of workers killed on the job. Photo by Peter Walsh.