

Dewey Funk

January 24, 2020 Interviewer: Jared Matsunaga-Turnbull; Camera: Don Bouzek

Q: What was your involvement with the work refusal in 2011?

DF: I wasn't hired yet with UNA. I was hired in April 2012 as the Occupational Health and Safety advisor. We went into the representation process after the discipline of the nurses so that we could take it to the OH&S Council. That was the appellant body at that time that we would go through. I had the opportunity and pleasure of meeting the people that invoked the right to refuse. I got to witness their experiences and the emotion that went with it. The right to refuse wasn't invoked lightly, and it took an emotional toll on some of the nurses that was greater on one than the rest. She never did return to nursing because of the emotional toll and the blame that management placed on the nurses. We went into the representation process during the OH&S Council hearing. When the counsel from the employer came out and said that it was normal for nurses to be hit on the job, spit on, assaulted, and that therefore it's normal, so they don't have the right to refuse, it was shocking. It really drove home that the employer's perception is that you're just a bunch of nurses on the floor and this is your job. So what are you doing? What's wrong? That they were second-class citizens and they didn't have any rights. They're workers; they do have rights. I carry that today still – that's a hot spot. From that day forward I would ask in all hearings that I've done a representation when there's assault on the job, of the employer – do you think it's normal for people to be hit on the job?

Q: What are the major health and safety issues that nurses face at work?

DF: Violence is a huge part of the job. It's a huge part of the job, and it doesn't matter where you are, because you're dealing with people who have medical issues. It's not just the people that have the medical issues; it's their family members and it's community that are quite aggressive. I did a study through WCB statistics, and we had a research analyst also go through this. The comparator was done in male-dominated Alberta accepted claims for lost time, and no lost time claims in all male-dominated industries except for policing, because WCB wouldn't give me those numbers, and it was compared to healthcare workers, which is female-

dominated. You are 50 times more likely to be assaulted in healthcare than any other industry in Alberta. It's phenomenal.

Q: What was the timeline of the refusal process?

DF: From what I remember, the nurses invoked the right to refuse. No, first off, there was the incident on the unit where the police took the individual away. As he left he pointed his finger as a gun at the nurse and said, I'm going to come back and f'in kill you, and he's taken away by police. One of the security personnel was taken to emergency in the hospital because they had an injury. He was taken to cells, and then the judge ruled that he had not been released from the hospital, because he had a mental health issue; so he had to go back. That's when the fear kicked in. He'd just done all this stuff, he'd breached the door, there were no safety mechanisms there for him. The nurses invoked the right to refuse. Then a lot of stuff kicked in. The union got involved, like the district rep and everything, on how do we manage the situation – what do the nurses need to be safe and work, and what's management offering to make it a safer work environment? There was a big discussion went on, but it wasn't enough. The nurses didn't feel safe; so they invoked the right to refuse. Management was ticked. Even in the hearing, you could feel and hear that they just couldn't comprehend that they wouldn't do their jobs. They were told this was their job; they should do it. The nurses actually stood up. For somebody to actually, I want somebody to think about really what the word right to refuse is. It means you're a worker, you are going to your manager and saying, I'm not going to do that job. You know you can be disciplined; that was the factor back then. You could be disciplined; you could lose your jobs. Nobody in healthcare invoked the right to refuse. This was a first. This is huge, especially for women going forth and invoking the right to refuse. It's not like in a mine. This is in healthcare. So they invoked the right to refuse and all the patients went down. I remember in the hearing the manager saying, and I told them not one patient better miss a pill. It wasn't about the nurses; it was about; you have a job to do. So you'd better do it or you'll be disciplined further. They knew that. The LPN at the time went to their local and said, do I have the right to refuse like UNA's members? The LPN was told no. The LPNs wanted to refuse, but their union didn't know the legislation. So they felt compelled to have to stay there, and they were afraid. They changed the procedure at that time. Before, the nurse went in and security

went in. When this individual came back from cells, it was security went in and told the patient to lie down, and then the LPN went in and administered the medication. But it was just about a whole day from the time he was admitted until the time he was discharged to Alberta Hospital in Edmonton, until the work refusal was over. When you look at that time, it really comes into play, because that was Section 35 of the OH&S Act, was that there was qualifiers. It could not be normal. If it was normal for the job, you couldn't invoke the right to refuse. That's why management was saying that it was all right, that it was normal for the nurses to be slapped around and have death threats, and that's why they didn't have the right to refuse. So it was an obligation that employees had to meet. With that, the employer was also supposed to provide, when the work refusal came in, they were supposed to do a written report and give it to the nurses, the people that invoked the right to refuse, their summary. It was in the hearing that came out that the counsel for UNA asked, "did you ever make this report?" They said, "yes, we made the report." Who did you give it to? Well we gave it to management. They didn't give it to the workers. Then we asked, "how long after did you make the report?" "Oh about four or five months." They thought they were above the law and that they didn't have to adhere to this. One of the reasons is that there are RNs and RPNs, registered psychiatric nurses, and that they have assessing skills so they should go forth and do the assessments and continually monitor whether they were under imminent danger, which they put forth in the hearing what imminent danger was. If you were under a building and the roof was collapsing, then you had a right to go out. That was their thinking to it, and that nurses should assess. They were saying the law didn't apply to nurses, because they can assess, but it would apply to every other worker in the province. So if you're in healthcare it doesn't apply, but if you're in mining it does.

Q: Were OH&S enforcement involved in the refusal?

DF: Oh they were. Do you want the constable's name? "X" was the OH&S officer. He's no longer with the OH&S department; he was promoted to director after this. All that stuff you'll delete. So the OH&S officer was called and he put forth that the nurses didn't have the right to refuse. He supported management. He said the nurses have assessment skills, and that they weren't facing imminent danger. Why he got involved is the nurses were disciplined and then they appealed under the OH&S Act, saying they were disciplined unfairly. Then he came in and wrote

a report saying he's upholding management's position that the nurses didn't have the right to refuse. That's how we had to go through the appeal process. It is of note that during the OH&S Council appeal he sat in the back of the room the entire time and watched the entire witness statements, and certain individuals of the counsel would interview him during the breaks. I have never seen that at any other hearing or arbitration or anything like that, that somebody would be like that through the whole issue. If we would've lost, we had the opportunity to go to Queen's Bench or to the Court of Appeal I should say. Then how is that compromised?

Q: What happened during the appeal process?

DF: With the appeal process, it was held in Grande Prairie. The nurses all gave their testimony and the employer put for their testimony. It's not like an arbitration, because actually the council members at that time would ask questions of the nurses also, not just the counsel from the employer and the employee. Actually the OH&S counsel asked questions also, extensive questions--not just a little bit, but extensive. They said it was for clarification. But it was extensive. The OH&S Council was not known for being friendly to workers. This was a landmark, that nurses had refused, and when we got the ruling that the nurses won, that was better than cake and ice cream. That was something.

Q: What was the structure of the OH&S Council?

DF: The OH&S Council at that time were the body where worker appeals would go to or employer appeals. They were supposed to be selected four from community, four managers, and four worker representatives. It wasn't always structured that way. The government of the day may have been a little to the right and there have been more employer reps than union reps. Some of the community reps may have had leanings towards the business community. So the structure of it was when they looked at setting panels forth on the OH&S Council for the hearings, it was supposed to be an independent chair chosen every time, and an employer and a worker rep. Then somehow a certain employer rep was chosen as a chair for every hearing after that. Today the OH&S Council, on June 1<sup>st</sup> 2018 with the new OH&S Act, the OH&S Council hasn't met very often, I think once or twice now. It's about reviewing policies, and there's no

appeal process. I actually like the process more now. We're more familiar with the process and it goes through the Labour Relations Board. So we're more familiar and on more equal footing in putting forth worker concerns.

Q: What was your experience like going through that process?

DF: I love this kind of stuff. To me it was one of the best experiences ever. It's been fundamental in how I represent workers, in that workers do have rights. I'm going to say that when I was hired by UNA I had no idea what I was getting into. I didn't think healthcare had that many issues. I've gone through an educational experience. The people that I represent are genuine; they're educated. I'm amazed at how the concerns that come forth when you get that many educated people in a room, management and workers, and still to this day that safety is secondary, and it's always a budget, and that human carnage had better add up to a dollar. I'm still amazed. Section 35 had obligations under the old OH&S Act, and part of it was that workers were supposed to receive a written copy. The employer was compelled at that time as a result of the OH&S Council, and the OH&S officer said, if, going forward, a legitimate right to refuse was to be implanted, the employer had to write a policy on the right to refuse work process, like a flow chart. That's when that first got established with AHS. Let's fast forward to June 1<sup>st</sup>, 2018. There's a new OH&S Act implemented and a dangerous work procedure is put into place. The employer has gone through and there's a landmark decision, the Grande Prairie case. They know what they have to do. For the work refusal policy and the flow chart, it took them until October 25<sup>th</sup>, 2019 to come up with a policy and a flow chart to be legislatively compliant. When you really think about it in the timeline, we've got one year from 2018 to 2019--so June 1<sup>st</sup>, July, August, September, October 25<sup>th</sup> – almost 17 months. During that time there had been numerous right to refuses for dangerous work, because it now gives them more rights if an employee leaves a dangerous work condition. It took them that long to get a process in. I was called to a meeting where five nurses invoked the right to refuse. Part of the process is you're supposed to tell the employer the reason. The employer came to me and said, "they won't tell us the reason." They were quite upset. I replied back to the employer, "so I see that you've actually educated them on the process that they would have to know this under Section 3 of

the OH&S Act.” I was met with deafening silence. Again, it’s still back to blame the worker; don’t take a look at yourself as an employer and enact your obligations and fulfill them.

Q: But you’re saying there are more work refusals now than before?

DF: Gladly, yes I am.

Q: Can you talk about the legacy of the 2011 action, and its impact?

DF: Let’s talk about legacy first with Grande Prairie. The union won; the nurses won. One nurse has never returned to work. A year later the individual is admitted back into the site and he’s put into the same seclusion room and says, “oh, I see you changed the door.” When he’s locked in the room, he proceeds to start to kick the window in the room, and he breaks it. It’s a double paned; he breaks one and not the other. The nurses are scared, but it’s not brought forth to me for a week. I get on and have a discussion with management. Management was, “well he didn’t break both.” But it created a chill. The nurses saw the discipline and saw what everybody else had gone through, and there was a psychological impact in this. So the employer agreed to replace the window. But then he was admitted a few months later and he did the same thing and broke the same window. It wasn’t until we had a more lively conversation that the employer finally put in the proper window so he couldn’t breach it. But it goes to show there that the nurses had that impact, but not only that, but this individual coming back and doing it again. And it’s like, “it’s okay” . . . It’s the blame, it’s never a collaborative force. The legacy I want to say going forth with Grande Prairie is I’ve had and continue to have the privilege of working with Jennifer and bringing forth OH&S issues. We have brought forth a lot of OH&S issues. I’m going to say that place is better now than it was back then. Are we all the way there? We’ll never be all the way there, because there’s always going to be something that we should be looking to improve. I believe that health and safety is a concentric circle that we should all be doing evaluations so we can keep people safe. Across the province is the new legislation and UNA advocating that we have the right to refuse, that nurses don’t have to go to work and be assaulted every day. We’re part of a new campaign also, put forth through CFNU, which I got a privilege of being. Through CFNU we advocated through Linda Silas to the HESA Report she

spoke to. When the HESA Report was given through, part of the recommendations is to have across the province a panel discuss security in hospitals. Nurses are now believing they are people that have rights, and are refusing to work in situations where they are being assaulted. I think it's a great thing. Where we've got to get through though the right to refuse is on broken equipment. You don't see a construction worker using a jackhammer that's not working; you get another one or one that's fixed. They're not driving a backhoe with three wheels. But the equipment in healthcare, if it's broken, they're told to continue using it, that they don't have a budget for it. So who is it affecting really? If there's a broken bed, that means you need more staff to turn the patients if they need to be turned; you can't lift the patients properly. So there's the injury factor. But why should a patient be put in a broken bed? We've got to somehow get this together to say healthcare deserves the same equipment as construction workers or any other worker. We wouldn't expect an office worker to sit in a broken chair all day. But I have pictures of chairs that are broken that they said, yes we'll use them right now; we don't have a budget.

Q: What's the fix for this?

DF: I think management actually has to listen at a level that it's brought to from the worker to the manager, and give the manager some authority to actually make change. Too many times I'm seeing that it's got to go up through different levels of management before a decision is actually made that makes a change. We know we can go through to a site director, and a site director will say, "I don't have the authority to make that change." So we have to always go up the line. What's really come into play is there's a system of trying to vet concerns away before it goes up the ladder before a change is made. It's actually a system that's put in place that inhibits corrective actions.

Q: What's the origin of PRCs and what's their application?

DF: PRCs were originated in 1976 at Mount Sinai Hospital in Ontario where there was a group of nurses that I think were on an ICU unit. They were told there's another patient coming up and they had to look after the patient. They said, we can't look after that patient without

compromising the health and safety of other patients. So they refused to look after that patient and management had to look after the patient. Those nurses were subsequently disciplined. That discipline was taken to arbitration and the arbitrator ruled that Occupational Health and Safety does not cover third party patients; so their discipline was upheld. In 1978 the nurses of Mount Sinai went on strike and they got the first PRC language, Professional Responsibility Committee language, in Canada. In 1980 United Nurses of Alberta went on strike and achieved Professional Responsibility Committee language. Every contract the nurses advocate for better, stronger language and PRCs and attain it. And it's always about representing effects on patient care. Occupational Health and Safety: here's the fundamental difference – it's legislated; it's law; it's passed in the house. So it's legislation, and yet employers don't believe they have to meet the legislation. It's like saying, "yeah, you can get a ticket for going 200 km an hour down the Anthony Henday, but for us we don't have to educate employees because it's the law in Occupational Health and Safety and their rights." But Occupational Health and Safety is about workers, worker rights. The PRC is about patient advocacy.

Q: How long after the refusal did the jail refuse? The workers at the jail invoked their rights shortly after that.

DF: After we got the decision from Grande Prairie, which I'll never forget that day getting that decision. That was the best year I'd had in a long time. Then about a year later, I can't remember exactly, I got a phone call at 5:30 in the morning from David Harrigan. He said, "Dewey, what are you doing?" I said, "I'm checking out the inside of my eyelids." He said, "you haven't heard?" I said, "heard what?" He says, "there's a strike at the jail, and the nurses don't want to go to work; they want to invoke the right to refuse." He says, "can we meet at Walmart?" He said, "there's a big parking lot and that's where everybody's meeting." It made sense, because it was right across the Anthony Henday from the Remand Centre. I said, "okay." So I drove over there and met David and we met the nurses. It wasn't just the nurses; we met AUPE. It was all the healthcare workers, AUPE, Health Sciences. We started hearing the concerns about what was going in. The guards were on strike and the RCMP were in there, and they were leaving some of the doors between the pods open for emergency cases. They told the nurses that were inside to find a room and hide that had an escape. So they were in a precarious position. I had the

opportunity to phone in and invoke the right to refuse. So I phoned in and said, “on behalf of all healthcare workers out here” – because AUPE and Health Sciences didn’t have their rep there – I said, “I’m invoking the right to refuse on behalf of them.” I’ll never forget; they said, “you don’t care about the prisoners?” I said, “no, it’s about the workers. They have a right to refuse.” It took us another four hours before the nurses from the inside were let out. This is in the morning, and I think it was about 6 or 7 o’clock at night the employer called an emergency meeting that we back into to say that they’d fixed everything and the nurses could go back to work. We said, “we don’t think so. There’s a lot of questions you haven’t answered.” But they’d prepared a letter already saying the nurses could go back to work. They said, “we’re giving you this letter to give to the nurses. So we fixed it.” But we have the right to appeal under that section still, that if we don’t agree, we can continue to refuse work. They were appalled that we did that. We made an agreement that the nurses had to meet at the Sturgeon Hospital. They had a number of different conclusions. They could report to work and work on the hazard assessments at that time to adjust the safety concerns. There was another group working on, I forget, where they could stay home and they could report to work if they’d just come from another unit to accentuate the workforce but not be part of it, but to continue on. It is of note that the guards went on strike. The reason they went on strike was because of safety concerns, and there were many safety concerns. One of the safety concerns I absolutely know because I’ve seen, I’ve been in the Remand Centre, was the doors wouldn’t close behind you. You actually had to pull the doors shut; it wasn’t being fixed. But anyway, it took about three days and the strike was over, and then the nurses reported back to work. This is important to realize how unsafe it really was. I was called by the HR person from the employer who said, “the nurses are still refusing to work. Can you go back in there, Dewey?” I said, “sure I can go see the nurses.” So I parked in the parking lot and there was a nurse and she said, “yeah, Dewey, come follow me.” So I walked past the first card swipe door; this is the employee entrance. Then I walked by behind the nurse for the next card swipe door. Then there’s a hand--you’ve got to put on your hand and it recognizes your hand, and walk through. One was broken; so I used the broken one and I was inside the Remand Centre. I walked in about 50 feet and I thought, you know, I should get a visitor card. So you know what I did? I walked out through the hand scanner, I pushed open the two card swipe doors, because you didn’t need the card swipe to go out, and then I walked around to the reception area to get a visitor card. So I’m an escapee. So

that goes to show some of the safety concerns that were there at that time. But the employer had gotten smart. They'd already started to say, "if you write a letter, they can go back to work." But we said, "no, it's got to be legitimate."

Q: All this has raised the profile of nurses.

DF: Yes it has, in a good way, that nurses are people. I've got a lot of good friends now. A lot of the people that I work with aren't just members; they're friends. So you work harder for your friends.

Q: Is there anything else you'd like to talk about?

DF: No, I'm pretty good, I think.

[ END ]