

## Rebalancing Democracy in Ontario's Workplaces

Submitted by: Greater Sudbury Chamber of Commerce

### Issue

The *Labour Relations Act, 1995* creates a legal regime which unduly favours union certification, instead of neutrally regulating the process. In 2005 there was an amendment to the Act which reinstated card-based certification to the construction industry only. (Bill 144, Section 128.1) The card-based certification process is undemocratic and should be repealed, as it deprives workers affected of the ability to vote for or against union certification.

### Background

It is time for the *Labour Relations Act* to be overhauled, with the aim of balancing the rights of employers and employees. The current regime unduly favours union certification and allows for creative and selective union organization tactics, with limited opportunities for the will of employers and individual employees to be heard in the process.

#### Card-Based Certification:

Under Ontario's current labour legislation, a card-based system means that the Ontario Labour Relations Board can order a vote on union certification in construction-industry workplaces if more than 40 percent of employees have signed membership cards to join the union, and furthermore, if more than 55 percent of employees in the proposed bargaining unit (on the day of the application) have signed cards, the Board can order certification of a union without a vote at all.

Card-based certification makes employers particularly vulnerable as certification is based on those working on the date of application. This means that certification without a vote can apply even where 55 percent of the employees at work on the date of application constitute a minority percentage of the employer's total workforce. Under the card-based system, if the union can demonstrate that more than 55% of the affected employees who were at work on the application filing date were doing bargaining unit work, and have signed a card with the trade union, then the Board **may** certify the ~~union~~ workplace **without** holding a vote. The Board can also direct a vote (as described below); however, in our experience the Board usually does not do this.

**Remember**, it is **only** the employees who were at work on the application filing date who are counted. It might be that you have 500 employees, but if only 4 of them were working on the application filing date (for example, on Christmas Eve) and 3 of them signed union membership cards, then the Board can certify the union based on the support of only those 3 employees. Under the current rules, the employer and the remaining 496 employees of that company find themselves unionized on Monday morning with no say, and no chance for a vote to have their say. This also creates unfavourable circumstances for workers whereby the Union organizers may not have spoken

with or provided any information about their organizing campaign to these other employees, and may never have spoken to them at all.

It is also important to note that while section 77 of the Act clarifies that nothing within the Act “authorizes any person to attempt at the place at which an employee works to persuade the employee during the employee’s working hours to become or refrain from becoming or continuing to be a member of a trade union”, this does not in fact prevent Union organizers external to the company’s workforce from attending (often safety-sensitive) jobsites to attempt to do just that.

Union strategies can also include the use of “salts” (individuals sent by the union to seek employment for the sole purpose of bringing a union to the workplace) to certify companies against the will of regular, longer-term employees by bringing forward applications on a day where it is known that only a few employees are working. Once again, the effect of the card-based system permits organizers to bypass larger groups of workers in the course of organizing a workforce in favour of opportunities to bring an application supported by a select group of employees only.

Secret ballot voting safeguards employees from intimidation or pressure from union organizers or employers and helps ensure their true opinion is represented – this logic is accepted in election voting around the world in democratic countries. While a secret ballot vote is conducted in a neutral environment by the Labour Relations Board, the collection of signatures on union membership cards is controlled entirely by union leadership. Union organizers can pressure employees to sign union cards without communicating the full effect of those signatures, and can submit applications with cards that may not reflect the final true wishes of some signees. The current process provides little means and opportunities for workers who signed cards to review their options or, where desired, change their minds.

Card-based certification is undemocratic, threatens economic prosperity and significantly shifts the balance in certification votes in favour of organized labour and against both employers and the workers themselves. Since there is no evidence to suggest that secret ballot voting does not allow employees to express their wishes, and significant risk that card-based certification does just that, the provincial government should eliminate card-based certification and repeal Section 11(2)(c) of the Act, which permits the Ontario Labour Relations Board to automatically certify a trade union without a secret-ballot vote taking place, under certain circumstances.

## **Recommendations**

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Eliminate the card-based certification system for union certification;
  - a. notwithstanding recommendation 1, the threshold for automatic certification should be raised from 55 percent of the workforce on the day of application to at least 66 percent of the employer’s entire workforce
  - b. notwithstanding recommendation 1, allow employees a “cooling off” period of at least three business days to dispute the voluntariness of the signature on their union

- card or their continued interest in membership notwithstanding its use in any application;
- c. notwithstanding recommendation 1, repeal Section 11(2)(c) of the Labour Relations Act;
  2. Amend the wording in Section 77 to read that “*no person shall attempt at the place at which an employee works to persuade the employee during the employee’s working hours to become or refrain from becoming or continuing to be a member of a trade union*”; and introduce a remedy that where a membership card is signed in violation of this section it cannot be relied upon in a certification application;
  3. Mandate that union organizers be required to communicate clearly to employees the purpose and impact of their card signature during their organization campaigns, including union dues, restrictions on working for non-unionized employers, and their use in a certification application in the employee’s current workplace; the certification cards should include an acknowledgement via a signature that this information has been communicated to the employee; and
  4. Introduce a mechanism that allows for legal costs recuperation in failed certification cases
    - a. introduce a filing fee for certification applications and unfair labour practice applications.
    - b. where the union has made numerous attempts to certify a workplace, the Board may find that union to be a vexatious litigant and dismiss the proceeding as an abuse of process for that reason. It may also require a union found to be a vexatious litigant to obtain permission from the Board to commence further proceedings or take further steps in an application or proceeding.