

X. Restoring Democracy in Ontario's Workplaces

Submitted by: Greater Sudbury Chamber of Commerce. Co-sponsored by: Sault Ste Marie Chamber of Commerce

Issue

The *Labour Relations Act, 1995* creates a legal regime which unduly favours union certification, instead of neutrally regulating the process. The card-based certification process is undemocratic and should be repealed; there should be more options to appeal the decisions of the Ontario Labour Relations Board; and there should be options for employers to seek recompense in failed certification cases.

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 underhanded 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 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 automatic certification will 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 (i.e., 10 employees working on the date of application to the Board could theoretically unionize an overall workforce of a 100). 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.

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 actual purpose of those signatures, and can submit applications with cards that do not reflect the true wishes of some signees. Under the current legislation, there is no means to address abuse and fraud by union organizers during an organizing drive.

Card-based certification is undemocratic, threatens economic prosperity and significantly shifts the balance in certification votes in favour of organized labour. 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.

Adjudication at the Ontario Labour Relations Board:

Under current legislation, the Board is composed of a chair, one or more vice-chairs, and an equal number of members representing labour and management. Section 110.14 authorizes the chair or vice-chairs to hear cases alone rather than in a panel if the chair considers it advisable to do so; in practice, this is often the case. Additionally, there are limited opportunities to appeal a vice-chair's decision, and if a request for reconsideration is brought forward, it is often determined by the same vice-chair that issued the initial decision. The province should amend the Act to remove Section 110.14 to ensure that a panel of Board vice-chairs and members hear each application, similar to other Ministry Boards; the province should also allow for a more responsive appeals process.

Failed Certification Applications:

Under current legislation, in cases where the Board holds a secret ballot vote in a workplace and the union receives 50 percent or less of ballots cast, the certification is deemed to have failed. Section 10.3 of the Act prohibits the Board from considering another application by the same bargaining unit for a period of one year. A certification application is costly, time-consuming and a distraction from the business's operations, and a grace period of one-year is not enough time for a business to recover from the legal proceedings of an attempted union certification. The reapplication ban should be extended from one year to five years.

Additionally, the legislation does not allow for any cost recuperation in failed certification cases, unlike other lawsuits. Such a recourse should be included in the legislation. Without such a provision, there is no disincentive for union organizers to bring forward applications year after year.

Recommendations

The Ontario Chamber of Commerce urges the Ontario Government 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. Repeal Section 110.14 and mandate that cases be adjudicated by a panel of Ontario Labour Relations Board chair members, with balanced representation from management and labour representatives, instead of a single Vice Chair to encourage a fair and equitable adjudication process.
 - a. Introduce an appeal/reconsideration process that includes a specific response date and allows for the appeal to be heard by a different Vice Chair or panel than the one that issued the initial decision.
 - b. Introduce a triage system under the Vice Chairs or panels that determine the preliminary viability of any application, including unfair labour practice applications, similar to application processors in the Human Rights Tribunal.

3. Amend Section 10.3 of the Act to extend the bar for reapplying for certification from one year to five years.
4. Amend 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.
5. 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.
6. 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.

Effective Date: May 5, 2021

Sunset Date: May 5, 2024