



BC FERRY & MARINE WORKERS' UNION

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Via Email

March 20, 2018

Labour Relations Code Review Committee,

Re: Submission of the BC FERRY & MARINE WORKERS' UNION to the British Columbia Labour Relations Code Review Panel

(1) The BCFMWU

The BCFMWU represents more than 3,600 marine worker members across the province, on over 35 vessels, 47 ports of call, and numerous other job sites.

(2) Constitutional and International Principles

Canadian workers have a Charter right to access meaningful collective bargaining, as affirmed by the Supreme Court of Canada over a decade ago in *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*.¹ In our submission, amendments to the Labour Relations Code are required to bring the legislation in line with the core constitutional principles set out in this case and subsequent decisions, including *Mounted Police Association of Ontario v. Canada (Attorney General)*² and *Saskatchewan Federation of Labour v. Saskatchewan*.³

These core constitutional principles include the following:

- (a) Fundamental values of human dignity, liberty, respect for the autonomy of the person and the enhancement of democracy are promoted by ensuring access to collective bargaining for Canadians; and
- (b) The freedom of association necessarily includes the right to strike.

¹ [2007] 2 S.C.R. 391.

² 2015 SCC 1, at para 68

³ 2015 SCC 4, at para 69.

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BC Federation of Labour

BC Government & Service Employees' Union

Canadian Labour Congress

National Union of Public & General Employees

International Transport Workers' Federation



(3) Summary of BCFMWU Recommendations

Based on the foregoing principles and our experience representing members across the province under the current Labour Relations Code, we recommend the following amendments:

1. Repeal Section 8 and ensure the fundamental right of employees to associate together in unions is protected, free from employer interference.
2. Restore card-check certification based on simple majority membership support to bring the Code into line with the majority of labour legislation in Canada and the Charter values established by the Supreme Court of Canada.
3. Amend the Code to provide for early disclosure of employee lists and contact information based on demonstrated 20 percent threshold support.
4. Establish firm timelines for decisions.

Amend Section 2 of the Code to focus on meaningful collective bargaining, consistent with *Charter* protected right to freedom of association.

(4) Repeal Section 8

Section 8 of the Labour Relations Code is often referred to as the “employer free speech provision”. In our submission, it has been in practice as a tool by employers to suppress the exercise of constitutionally protected associational activity by interfering with the organizing and certification of unions.

The Supreme Court of Canada has clearly established that collective bargaining enhances the Charter value of equality, and specifically one of the fundamental achievements of collective bargaining is to palliate the historical inequality between employers and employees. In our submission, section 8 unfairly shifts the balance firmly in the favour of the employer by permitting a party with recognized power to exercise that power over its employees in a matter that unduly influences or restricts their choices with respect to collectively organizing in the workplace.

(5) Certification

Card-Check System

In our submission, the biggest barrier to certification is the secret ballot vote system, as this Panel will no doubt hear from many unions. Research has demonstrated that unionization and certification is severely suppressed by mandatory votes as compared to card-check certification.⁴

The majority of Canadian jurisdictions employ card-check systems. Card-check certifications exist in Newfoundland and Labrador, New Brunswick, PEI, Quebec, Alberta, Federally all three territories, and in certain industries in Ontario and Nova Scotia.

Mandatory vote systems expose employees to a much greater risk of improper employer influence which can effectively undermine the fundamental right to participate in associational activity by employees.

Prior panels tasked with a review of the Code who turned their minds to the issue all recommended a card check system over a mandatory vote. Some of the observations and recommendations of those panels, arrived at after extensive public consultation and research, include the following:

(a) "While the statute still retained prohibitions against employer interference in the certification process, after the introduction of the vote the rate of unfair labour practices by employers during organization campaigns increased dramatically. The rate of new certification dropped by approximately 50%."⁵

(b) "The surface attraction of a secret ballot vote does not stand up to examination. Since the introduction of secret ballot votes in 1984 the rate of employer unfair labour practices in representation campaigns in British Columbia has increased by more than 100%. When certification hinges on a campaign in which the employer participates the lesson of experience is that unfair labour practices designed to thwart the organizing drive will inevitably follow... It is not acceptable that an employee's basic right to join a trade union be visited with such consequences and illegal interference. Nor is there any reasonable likelihood of introducing effective deterrents to illegal employer

⁴ *Recommendations for labour law reform: a report to the Honourable Moe Sihota, Minister of Labour / submitted by the Sub-Committee of Special Advisers, John Baigent, Vince Ready, Tom Roper.* Victoria, [B.C.]: The Sub-Committee, 1992, at 6 (1992 Panel Report); Chris Riddell, "Union Certification Success Under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998" (2004) 57:4 *Industrial and Labor Relations Review* 493 at 509.

⁵ 1992 Panel Report, *supra*, at 5-6.

conduct during a representational campaign.”⁶

(c) “Employers responded negatively to our Discussion Paper proposal to not recommend a mandatory certification vote. They continued to advocate for a vote before certification because they believe that is the only way they can be assured that their employees truly want to organize. We did not hear from employees that they wished a certification vote. Because the employer directly controls the ability of any employee to maintain his or her livelihood and therefore holds the balance of power, we feel that the concerns of employees and their unions must take precedence in this case. We affirm our proposal in the Discussion Paper to not recommend a mandatory certification vote. We affirm the individual right, recognized provincially, nationally, and internationally, to join or form trade unions. Experience demonstrates that employers do seek to affect employees’ right to choose. In our view, extending the certification process by introducing a mandatory certification vote would only further invite such illegal activity.”⁷

The BCFMWU strongly believes that a mandatory vote system is a process that interferes in the power of employees to collectively pursue workplace goals. We recommend an amendment to the Code so that a union will be certified if it meets the threshold of 55% of membership cards. Where a union has between 45 and 54% of cards, a secret ballot vote should be scheduled.

Early Disclosure of Employee Contacts

In many workplaces today employees at a potential bargaining unit may not know each other because the workforce is spread across a large geographic area, there is a multitude of worksites or because the workforce is composed of a large number of part-time or casual employees, or because employees work from home.

In light of this changing employment landscape, and consistent with the core constitutional values established by the SCC we recommend amendment to the Labour Relations Code to require early disclosure by an employer to a union of the contact information for all employees at a workplace once the Union can establish at least 20 percent membership support.

⁶ *Ibid*, at 26.

⁷ *Managing Change in Labour Relations – The Final Report – Prepared for the Minister of Labour Government of British Columbia by the Labour Relations Code Review Committee (Section 3 Committee) Vince Ready, Stan Lanyon, Miriam Gropper and Jim Matkin, Victoria, [B.C.]: The Review Committee, 1998, at 51-52 (“The 1998 Panel Report”).*

(6) Time Lines


In circumstances where a vote is required on a certification application, the BCFMWU recommends that a certification vote be required to be conducted within five days of any certification application, which may only be extended to a maximum of an additional two days where it is practically impossible to arrange a vote within 5 days.

In our view, the existing 180-day window for decisions is too lengthy, particularly with respect to unfair labour practice complaints during an organizing drive, collective bargaining or job action. Once six months have elapsed since the date of a complaint, the relationship between the union and the employer can have incurred irreparable damage and/or employees can lose faith in the union as their advocate.

The BCFMWU recommends that the Code or the Regulations be amended to require "bottom line" decisions on Part 5 applications and disputes during certification to be rendered within 14 days of the conclusion of submissions or hearing on the matter and no later than 30 days after the complaint or application is filed by the union or employer.

In solidarity,

BC FERRY & MARINE WORKERS' UNION

A handwritten signature in black ink, appearing to read 'GJM', with a long horizontal flourish extending to the right.

Graeme Johnston, Provincial President BCFMWU