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20 March 2018

Labour Relations Code Review Panel
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Re: Submission of British Columbia Regional Council of Carpenters (BCRCC)

This is the BCRCC's submission in response to the Panel's letter to the community inviting submissions from stakeholders and interested residents.

The BCRCC supports the proposals contained in the BC Federation of Labour submission. From its perspective as a stakeholder in the construction industry, the BCRCC provides the following specific comments primarily concerning acquisition and termination of bargaining rights issues.

Right to communicate (Section 8)

The BCRCC wholeheartedly endorses the view of other stakeholders that Section 8 of the Code ought to be repealed. The free-speech provision runs counter to the underlying principle of modern labour legislation intended to protect free collective bargaining and the concomitant right of employees to belong to a trade union of their choice. The employer speech provision is particularly troublesome in the age of social media. An employer's anti-union message can now be spread far and wide in an instant. Employee free choice can be indelibly tainted with a single Tweet or social media posting. Section 8 provides employers with a far too powerful tool in all sectors, but its impact is particularly severe in traditionally difficult to organize industries.

Even where the Board finds that an employer has gone beyond the scope of free-speech, once the damage has been done the Board has failed to appreciate the far-reaching implications of the employer's violation of Section 8. For example, in *Wescor Contracting Ltd.,* BCLRB No. B2/2012, an employer circulated a letter to employees, *inter alia* assuring them that if they opted for decertification their wages would remain the same, but if they remained unionized there would be a wage reduction. The Board found a violation of Section 8 as the free-speech right does not permit an employer to "… insert itself into and initiate or assist employees in a certification campaign." (para 75). To remedy the violation, the Board ordered that the ballots cast in the earlier decertification vote not be counted but went on to order a new vote with conditions (para 103). That remedy failed to recognize that irreparable damage had already been done by the employer. Not surprisingly a majority of ballots cast in the second representation vote favoured decertification.

Repeal of Section 8 should prevent, or at least minimize the future use of *Wescor* like remedies.

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Card check certification system

Apart from being time consuming and administratively cumbersome, conducting a representation vote in connection with every certification application poses a barrier to the exercise of employee free choice. Even if Section 8 is repealed, the time that passes from the filing of an application for certification until a vote is held undermines the exercise of employee choice regarding union representation. It is simply too easy for employers and others to capitalize on the passage of time preceding a vote to mount an anti-union backlash. Provided that *Labour Relations Regulation* 3 and 3.1 are met and there are no other irregularities justifying a vote, certification should be granted where a majority of employees sign cards.

Timelines where certification votes necessary

In certain circumstances, including where unions achieve at least 45% support, but less than a majority, representation votes will be necessary. In order to minimize interference with the true wishes of employees, such votes should in person in all but the rarest of circumstances and the vote ought to be conducted as soon as reasonably possible after the date of application.

Fixed raiding periods

The BCRCC stands with other stakeholders proposing that the Code contain a standardized time frame for raiding rather than tying the open period to a specific time associated with the terms of individual collective agreements.

The 1998 Kelleher Lanyon Construction Industry Review Panel Report included a recommendation that the raiding period for employees in the construction industry be July and August of each year. That recommendation was based on the Panel's recognition that, to avoid raids, certain collective agreements have been structured so that the time frame and duration of the agreement cannot easily be discerned. The government did not act on the Panel's recommendation regarding the open period.

The BCRCC has encountered problems identifying the anniversary date of certain collective agreements. Further, standard agreements in the construction industry are for terms from May 1 to April 30, resulting in the raid period falling in November and December. There are shutdowns throughout the industry in December and, in certain areas of the province weather conditions limit the amount of construction work that can be performed in those months. Therefore, the BCRCC urges the Panel to recommend that the raiding period, at least in the construction industry, be established as July and August of each year.

Use of mail ballots

Mail ballots have been used with increasing frequency in recent years because of the limited numbers of IRO's available to conduct in person votes. There are a number of problems associated with mail ballots, not the least of which is the extended "campaign time" which provides employers a greater opportunity to interfere with the true wishes of

their employees. Further, in the construction industry the mechanics of conducting a mail ballot can be daunting because of the nature of the industry. From one day to the next, eligible voters may be at a remote construction camp, at home or at a different job site. Further, some construction workers do not have fixed mailing addresses. In the result eligible voters are disenfranchised, either as a result of not receiving a ballot in time or at all.

The BCRCC's experience with mail ballots has been dismal. Despite having adequate support at the date of application, the BCRCC has never maintained majority support when a mail ballot has been ordered.
Section 24 of the Code contemplates mail ballots and provides the Board with the discretion to order that the vote be conducted within a longer period than the 10 days specified for in-person votes. Apart from the timing of the vote, the Code contains no criteria governing the use of mail ballots. Section 19 of the *Labour Relations Regulation* provides the returning officer with the authority to decide whether a mail vote should be conducted. The regulation fails to provide any guidelines for the exercise of the returning officer's discretion.

The Code ought to be amended to stipulate when mail ballots are permitted. Their use should be restricted to situations where the parties mutually agree to a mail ballot or where there is no viable way of conducting an in-person vote. Administrative convenience should not be a factor.

Summary

In summary, the BCRCC submits that the above changes are required to modernize the Code so that it meets the needs of modern times and reflects the fundamental intent of labour legislation to foster and protect employee freedom of association and the collective bargaining process.

All of which is respectfully submitted

Yours truly,

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