

LAUGHTON & COMPANY

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BARRISTERS & SOLICITORS

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By email: LRCReview@gov.bc.ca

Labour Relations Code Review Panel

Panel Members: Barry Dong
Michael Fleming
Sandra Banister, Q.C.

RE: BC LABOUR RELATIONS CODE

I act for the Construction Maintenance and Allied Workers Canada. On its behalf and in response to the Panel's invitation I am making submissions on two matters. First the acquisition of bargaining rights and second the appropriate raid period in the construction industry.

THE ACQUISITION OF BARGAINING RIGHTS

It is my submission that the Code should be amended to permit the acquisition of bargaining rights through a card based system without the necessity of a vote.

A brief review of the background to this issue supports a conclusion that the necessity of a vote was largely politically driven and contrary to recommendations for labour law reform that had been made in September 1992.

The modern era of labour relations in British Columbia begins with the 1973 Labour Code which attempted to balance the interest of labour with those of management while safeguarding the rights of employees. From its introduction until 1984 there were few significant changes.

In 1984 the *Labour Code Amendment Act* was enacted and it changed the process by which trade unions became certified. Until that time unions could acquire a certification on the basis of signed membership cards. The 1984 amendment

provided that membership cards were not enough and employees were required to obtain union representation through a secret ballot vote. At the same time employers were able to obtain decertification after two years of not employing bargaining unit members.

In 1992 the government appointed a three person Committee with a broad mandate to recommend an overall industrial relations strategy for the Province. That Committee issued its report in September 1992. In reviewing the 1984 amendments it noted that the introduction of the secret ballot vote into British Columbia labour legislation constituted a departure from the norm in Canadian law where union support had traditionally been assessed on the basis of signed membership cards. Further, while the statute still retained prohibitions against employer interference with the certification process, after the introduction of the vote the raid of unfair labour practices by employers during organization campaigns increased dramatically. In addition, the rate of new certification dropped by approximately 50%. The Sub-Committee made a series of recommendations to the Minister of Labour including the threshold issue surrounding certification which was whether it should be granted on the basis of signed membership cards or a secret ballot vote.

In concluding that signed membership cards were the preferable approach it was noted that:

- The surface attraction of a secret ballot vote does not stand up to examination.
- When certification hinges on a campaign in which the employer participates the lesson of experience is an unfair labour practice is designed to thwart the organizing drive will inevitably follow.
- Once a vote was ordered this led to key union supporters being fired or laid off while threats of closure dominated the campaign.
- There was no compelling evidence that membership cards do not adequately reflect employees' wishes. In those cases where improper influence by a union during a certification campaign is established the Board has a plenary jurisdiction to dismiss the application or to order a vote.

It is to be noted that the current procedures and regulations regarding membership cards are enforced strictly in order to provide safeguards for the rights of employees and employers. This includes requirements that the cards be properly dated, refer to the correct union local and contain an acknowledgment of the consequences of signing the card.

To complete this historical review a new government came to power in June 2001 and introduced reforms to the Labour Code. Amongst other initiatives it reintroduced a mandatory secret ballot vote for union certification applications.

Insofar as other jurisdictions are concerned I note that the both the Provinces of Ontario and Alberta have recently modified their labour relations legislation to permit certification without a vote. In addition federally the *Canada Labour Code* amendments which introduced the requirement of the vote were short lived and were removed last year.

Accordingly, on the basis of the matters set out above, it is my submission that certification should be granted to unions on the basis of signed membership cards and not a secret ballot vote.

CHANGE IN UNION REPRESENTATION

Section 19 of the Code permits a vote to change union representation where more than 50% of the employees are in support. This change in union representation is commonly called a "raid". The Code restricts raid applications to the 7th and 8th month of each year of a collective agreement.

In the construction industry the building trades unions enter into standard collective agreements which have a standardized term running from May 1 in any particular year to April 30 of any particular year. The 7th and 8th months i.e. the raid period is therefore November and December.

This presents a difficulty for trade unions that are the subject of raids. November and particularly the latter part of December are when employers typically have little activity and have laid off many of their regular employees. An employer who had 50 employees during July and August could easily have as little as 5 employees in the last two weeks of December. The result of this is that the raiding union could obtain certification on the basis of an artificially low number of employees.

It is submitted that this is contrary to the majoritarian principles upon which the Code is based. In addition, it places unions in the construction industry in a far more vulnerable position than those in other sectors.

It is generally accepted that raid applications are inherently disruptive for employees, employers and trade unions. It is for this reason that the current provisions of the Code restrict the time within which raids may be brought thereby striking a balance between instability in the workplace and employees' rights to be represented by the union of their choice. Both these concerns could be better met in the construction industry by providing that raids may only occur during the 3rd and 4th month of each year of a collective agreement. This would enhance stability by ensuring that a raiding union was required to obtain a true majority of employees

and not an artificial level of support. In addition, it would ensure that employees who do not wish to change representation would have their voices heard.

SUMMARY

In summary, it is submitted that the Code should be amended to grant certification on the basis of signed membership cards. In addition s. 19 should be amended to establish the 3rd and 4th month of each year of a collective agreement as the raid period in the construction industry.

Yours truly,

LAUGHTON & COMPANY

A handwritten signature in blue ink, appearing to read 'B. Laughton', with a long, sweeping flourish extending to the right.

BRUCE LAUGHTON, Q.C.

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