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VIA EMAIL

Labour Relations Code Review Panel
Barry Dong, Michael Fleming, & Sandra Banister, Q.C
LRCReview@gov.bc.ca

Dear Committee Members:

This submission is filed on behalf of the International Union of Operating Engineers, Local 115.

Our Union represents over 10,000 workers employed in construction, road building, transportation, waste management, mining, aviation and various other industrial sectors throughout British Columbia and the Yukon.

While we will focus our submissions on construction labour relations (as set out below, the Operating Engineers would like to see a construction industry review) the Union also requests that the Panel recommend a number of other changes in the *Labour Relations Code*:

- A return to Card Based Certifications: this will allow employees the freedom to choose to belong to a Union without employer interference
- A restriction on employer interference in certification drives (restore former Sections 6 & 8): our union has undertaken many organising drives which have been defeated by an aggressive employer campaigns against the Union. The so-called “employer free speech provisions” of the Code ignore the vulnerability of workers seeking to exercise their constitutional right to bargain collectively and ignore the power imbalance between workers and employers.
- Uniform Raid window in the Construction Industry: Construction is a seasonal industry and a fixed raid window should be established in the late spring or summer - employer dominated unions of convenience often set their raid window in construction for the winter months when few if any workers are employed – they also use the confusing and variable raid window rules to otherwise prevent workers from selecting a union of their choice
- Limits on the ability to contract below Employment Standards minimums: while this would require a change to the Employment Standards Act which may be beyond the scope of the Panel’s mandate, the continued ability for disreputable unions and employers to contract below employment standards minimums negatively impacts the efforts of legitimate employers and unions
- The restoration of funding to the Labour Relations Board: this would allow for the return of part time members with expertise in the different sectors of the economy (i.e., wingers) and a full review and investigation of employer dominated unions of convenience
- Duties (Section 2): We seek a restoration of the focus on employee access to collective bargaining



rise above.



- A prohibition on Partial decertification which is used by employers to divide groups of workers and which is conceptually inconsistent with the Union's obligation to represent bargaining units as a whole

Construction Labour Relations

Approximately half the members of the Operating Engineers work in the Construction Industry. The construction industry is a broad umbrella that captures a wide range of different workers and undertakings – there are however several common features of the industry that make it unique from a labour relations perspective.

The Labour Relations Code is largely designed for workers employed in fixed industries – industries with a fixed location and a relatively steady workforce. In contrast to fixed industries, the construction industry is project driven - once construction is completed the project concludes.

Another defining characteristic of the construction industry is mobility. Employers and employees move from project to project. Some employees move with their employer but many are employed for the duration of the project and have no expectation of moving on to the next project with that employer.

In many areas of the construction industry there are relatively low barriers for entry. Many construction employers have relatively little capital invested in their business - the primary asset of the business is the expertise of the owner – and that person enjoys the same mobility as others in the industry.

Frequently there are a number of different small employers employing members of different unions working on an integrated construction site. Traditional enterprise based bargaining creates a risk of industrial instability as a job action by one union or employer can shut down an entire project.

In addition to concerns about industrial stability, the standard labour relations model does not allow construction workers to have meaningful access to collective bargaining. Employees hired for a project have little time to organise a union and even if they are somehow able to do so, it can be very difficult if not impossible to conclude a collective agreement before the project is completed.

Finally, the Industry is beset by a vigorous underground economy and by employer dominated unions of convenience which are designed to inhibit the ability of construction workers to select a bargaining agent of their choice. Both of these factors make it difficult for legitimate employers with real unions to compete for available work.

Construction Labour Relations

In light of the unique nature of the construction industry other jurisdictions in Canada have enacted construction specific labour relations legislation.

In British Columbia, there are currently two provisions which deal with construction labour relations: Section 41.1 & Regulation 3.1. These provisions are the remnants of what was for a brief period a rational construction labour relations regime that flowed from 1998 report of the Construction Industry

Review panel (Lanyon & Kelleher) entitled looking to the Future: Taking Construction Labour Relations into the 21st Century. This was the last comprehensive review of construction labour relations in British Columbia.

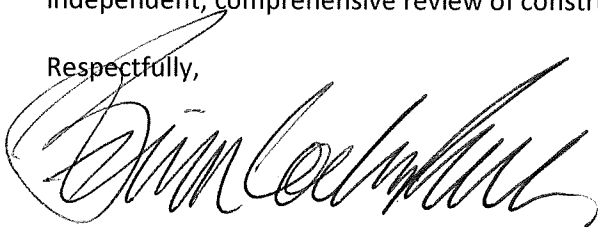
Under the heading “BCBCBTU Bargaining”, the Kelleher and Lanyon Report noted that construction industry bargaining in 1998 was not effective. In their report, the Panel stated: “In our view the existing building trades bargaining council structure is not working effectively. The majority of building trades unions will accept this assessment. The current structure is inflexible and in some respects has proved unworkable.”

Despite this assessment, when the Liberal Government was elected in 2001, it repealed most of the Legislation recommended by the Panel with the express intention of returning construction labour relations to the dysfunctional system in place before the Industry review. The Minister made the Government’s intention clear in the Legislature: “Let’s be clear on what we are doing here. We’re returning the situation to pre-1998.”

Predictably, the system of bargaining that followed the repeal of the 1998 Legislation has not been effective. This has been noted by both the Labour Relations Board and Panel member Fleming in his “Interim Report regarding a Section 41 Inquiry into Labour Relations in the British Columbia Building Trades Sector of the Construction Industry”.

In light of the unique nature of the Construction Industry and the problems with the current system of construction labour relations (or more properly the lack of a coherent comprehensive system of construction labour relations) the Operating Engineers are asking the Panel to recommend an independent, comprehensive review of construction labour relations.

Respectfully,



Brian Cochrane
Business Manager