



March 13, 2018

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 am the First Vice-President of the Public and Private Workers of Canada (PPWC). On its behalf and in response to the Panel's invitation I am making this submission regarding the acquisition of bargaining rights in British Columbia.

THE ACQUISITION OF BARGAINING RIGHTS

It is the PPWC's 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 the PPWC's submission that certification should be granted to unions on the basis of signed membership cards and not a secret ballot vote.

In Solidarity,



Gary Fiege
PPWC
First Vice President