



Retail Action Network
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Labour Relations Code Review Panel

Michael Fleming (Chair)
Sandra Banister, Q.C., (Member)
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The Retail Action Network Submission to the Labour Relations Code Review Panel

Dear Committee Members,

On behalf of the Retail Action Network we are pleased to submit the following recommendations to you as part of your consultation under Section 3 of *Labour Relations Code* (the “Code”).

The Retail Action Network

The Retail Action Network (“RAN”) is a community based workers rights organization fighting for workplace justice, increased wages, and better conditions for non-unionized retail, food-service, and hospitality workers (“RFH workers”) in the Greater Victoria region of BC. We support workers who experience wage theft, workplace harassment, bullying, and discrimination. We also support workers who want to unionize and connect them with unions who can help. Our work also includes organizing worker-led campaigns to publicly pressure bosses to cease abusive or exploitative behavior; connecting workers with advocacy and legal services; delivering workers’ rights workshops in the community in high schools and for vulnerable segments of the population; and advocating for systemic legal and policy change. RAN is often the first point of contact for workers facing injustice. RAN is the only organization of its kind in BC to help voice the concerns of non-unionized RFH workers.

Our knowledge of workplace conditions experienced by RFH workers comes from the questions and concerns we receive from workers daily and from the ground-breaking research we conducted in 2015 with the Vancouver Island Public Interest Research Group (VIPIRG).¹ Retail,

¹ Hardman, Stefanie. (2016) “Part-time, Poorly Paid, Unprotected: The Experiences of Precarious Work in Retail, Food-service, and Hospitality in Victoria, BC.” When RAN began, in the fall of 2015, we partnered with the Vancouver Island Public Interest Research Group (VIPIRG) to conduct ground-breaking community-based research examining workplace conditions faced by RFH workers in Greater Victoria. The report has been included with our submission as an addendum. Available online: <https://vipirg.ca/publications/2017/3/16/new-vipirg-report-part-time-poorly-paid-unprotected-experiences-of-precarious-work-in-retail-food-service-hospitality>

food-service, and hospitality work is a paradigmatic example of precarious work. Most RFH workers rely on minimum wage.² In addition to low wages, workers in these industries receive little or no benefits such as paid sick days, or health and dental benefits; work part-time and unstable shift work; and have little job security. Unionization rates for RFH workers are low,³ and consequently workers must rely on the inadequate BC *Employment Standards Act* (“the ESA”) to provide a floor of working conditions, including setting minimum wages.

RFH workers who want to unionize to improve their working conditions often face great challenges to doing so. High labour turnover, small workplaces, the franchisee-franchisor business model, a large proportion of part-time work and seasonal work, a disproportionate number of young workers, and highly insecure working conditions characterize many food service and retail workplaces making it very difficult for these workers to unionize. Because of all of these factors, workers in RFH experience a sectoral disadvantage when it comes to forming and maintaining a union.

The existing low union density in RFH workplaces also makes unionizing difficult because workers are unfamiliar with unions, often do not know about their right to unionize, how to unionize, or what benefit unionizing can bring. If unionization is going to be a real and meaningful option for RFH workers, then changes to the Code must account for the specific sectoral challenges RFH workers face. Workers in RFH workplaces are often perceived to be “unorganizable,” but the barriers they face in accessing unionization are not insurmountable.

We have focused our submission on five areas that would improve the ability for RFH workers to exercise their right to unionize:

- (1) Return to card-based union certification
- (2) Unfair labour practices and remedial certification
- (3) Allow unions to access employee list
- (4) Make unionization accessible to workers in franchised businesses

While we focus our recommendations on these specific areas, we have also reviewed the submission this Panel received from the BC Federation of Labour. We also wish express our support of the BC Federation of Labour’s Recommendations that we do not speak to in this submission.

Return to Card-Based Union Certification

² The retail trade sector and food and accommodation sector have the largest proportion of workers paid at minimum wage. Galarmeau, Diane and Eric Fecteau. (2014) “The Ups and Downs of Minimum Wage.” Available Online: <http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14035-eng.pdf>

³ In 2013, only 9% of accommodation and food-service workers had union representation and fewer than 14% of retail workers were members of a union. Meanwhile the provincial rate of unionization in BC is 31.5%. See Hardman, Stefanie note 1 at p. 6.

Your review panel has been tasked with ensuring BC's labour code is consistent with best practices elsewhere in Canada. Only two other jurisdictions (Manitoba and Saskatchewan) require a representation vote. If changes to the Code are going to ensure people in BC have the same access to labour rights and protections enjoyed by other Canadians we must return to card-based union certification.

We know that requiring a mandatory vote after workers have signed membership cards dramatically increases unlawful labour practices, decreases rates of certification, and reduces workers access to their constitutionally guaranteed freedom of association.⁴

Requiring workers to vote 10 days after an application is made to the Labour Board invites the employer to interfere with the certification process. Possible employer interference is magnified for RFH workers because of highly precarious scheduling practices in the sector and the many subtle ways employers can intimidate workers. For example, an employer could cut someone's shifts last minute, send them home from a shift early (saying the business is not busy enough), schedule them "on call," assign them to a work in a section of a restaurant that is less profitable, etc. All of these precarious scheduling practices are normal in the restaurant and retail industry, and so it is easier for an employer to disguise these employment reprisals and union interference tactics as regular business practices.

Moreover, for workers in small RFH workplaces the interference that comes with the delay between signing membership cards and voting can be intensified by the interpersonal relationships that often characterize employer/manager employee relations (e.g. "*we're all a big family here*").

The secret ballot vote also makes the process of unionizing difficult because it puts enormous pressure on organizing workers to keep the campaign secretive. The secrecy makes workers feel cautious and introduces even more fear into what is actually a lawful process. Workers should not have to fear exercising their legal right to unionize.

The mandatory vote makes it harder for workers to join unions and easier for employers to unlawfully pressure and intimidate employees into not doing so. We recommend that the Panel restore card based union certification to make the freedom to associate a real and meaningful right for all workers.

Unfair Labour Practices and Remedial Certification

Unfair labour practices severely impact workers ability to unionize and can strike fear into workers who wish to attempt unionization in the future. Because of the serious implications of unfair labour practices we recommend meaningful remedies for workers when employers interfere with the unionizing process. When employers interfere with the ability of workers to

⁴ MacTavish, John and Chris Bouchanan (2016). "Restoring Fairness and Balance in Labour Relations." Available Online: <http://bcfed.ca/sites/default/files/attachments/lrb%20paper%20-%20final%20with%20pullout%20quotes.pdf>

form a union, remedial certification should be the response. Remedial certification can be a strong deterrent and proactively give the Code teeth.

Allow Unions to Access Employee List

We recommend that unions be granted access to employee lists after demonstrating a threshold of 20 percent support of employees in the proposed bargaining unit. An employee list with all contact information should be given by the employer within a time period that is reasonable.

Having an employee list is especially relevant for workers in the RFH industry because there are often many part-time or seasonal workers working irregular shift-work. It is unlikely and unpractical to expect that workers will know everyone in the workplace. It is also imperative that unions have access to regularly updated employee lists, since employee turnover in the RFH industry is high.

We recommend that a reasonable timeline for disclosing the employee list is less than 1 week after a union makes an application to the Board. The ability to access updated employee lists as needed should be built into the legislation to be sensitive to industries with high employee turnover.

Make Unionization Accessible to Workers in Franchised Businesses

As mentioned in the introduction, the move from corporately owned enterprises to the franchisee-franchisor model is another hurdle to unionization workers in the RFH industries face. We recommend that the Code be amended to allow for broader based bargaining. Different franchisees of the same franchisor in a similar geographical location should be treated as single employer with multiple locations. As the recent *Ontario Changing Workplaces Review: An agenda for Workplace Rights (Final Report)* articulated:

Competitors in an industry may operate either through a corporate model or a franchise model, or a combination of both, and there is no good public policy reason to treat one model differently from the other. So, for example, take three business competitors, which are large purveyors of fast food. One operates only corporate stores or locations. A main competitor in the same market, and selling similar products under a different brand, uses a franchise model where all of the locations are operated by franchisees. A third competitor uses a combination of corporate-owned stores and franchised stores. Should the different organizational models for selling three competing brands in the same market mean that one should be subject to unionization under a set of rules that are not applicable to the other two? Is it fair to employees of the many franchisees of the same franchisor that they have no effective access to collective bargaining while the employees of a competitor, who has multiple or some corporate locations, do? We think the answer to that question is obvious. (pg. 358)

Adopting such a policy would help facilitate meaningful access to unionization for industries such as RFH that face significant structural barriers to unionization. Amending the Code to make

unionizing more accessible to people working in franchised businesses will allow the Code to be more responsive to the fissuring of the economy.

Conclusion

Workers employed in retail and foodservice work face significant sectoral disadvantage when it comes to exercising their rights to unionize. High labour turnover, small workplaces, the franchisee-franchisor business model, a large proportion of part-time work and seasonal work, a disproportionate number of young workers, and highly insecure working conditions are a few common features of RFH work that make the process of unionizing challenging for workers, and unions trying to organize them. One's access to labour law and collective bargaining power should not depend on the sector within which they work.⁵ We know that the social location of workers often influences their position and experience in the labour market. For example, low-wage food service and retail work is disproportionately comprised of women and racialized minorities. But the challenges to unionization for workers in RFH workplaces can be mitigated by amending the Code to account for these sectoral disadvantages. Labour law, if it is to be fair and accessible, should facilitate workers to challenge systemic labour market disadvantages, not reproduce them.

⁵ For a discussion on how labour law reproduces labour market inequality see Judy Fudge "Rungs on the Labour Law Ladder: Using Gender to Challenge Hierarchy" (1996) *Saskatchewan Law Review*, 60:237-264. Available online: http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1784&context=scholarly_works