

Vancouver & District Labour Council



March 19, 2018

Labour Relations Code Review Committee
Ministry of Labour

Email: LRCReview@gov.bc.ca

Dear Committee Members;

On behalf of the Vancouver and District Labour Council, I write to share our views on the Labour Relations Code for consideration in your ongoing review.

It is our belief that in considering the Labour Relations Code it is critical to keep in mind that the nature of our economic system is such that employers are imbued with nearly boundless rights over the workers they employ, except where limited by applicable laws, regulations, and collective agreements.

In providing a legal framework for the relationship between employers on the one hand, and workers and their unions on the other, it is critical that Labour Relations Code brings fairness and balance.

Instead, over the past sixteen years, British Columbia's labour laws and their application has perpetuated and intensified an imbalance which is today skewed radically in favour of employers.

Workers who attempt to exercise their constitutional right to form a union are routinely faced with captive audience communications and meetings, threats, bribes, and any number of other tactics aimed at stopping unionization efforts.

When workers and their unions seek the assistance of the Labour Relations Board, they find it starved of resources. This can hinder enforcement and add to the imbalance favouring employers.

Our affiliate unions have also experienced "contract flipping" which today has become a notorious tactic of employers to maximize profitability while keeping wages low and preventing workers from fully exercising their constitutional rights to union representation and collective bargaining.

Meanwhile our economy is changing, largely to the detriment of workers. The rapid introduction of automation, proliferation of part-time and casual jobs, promotion of low wages, and attack on employment standards in recent years means that unions are needed just as much as ever.

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To: Labour Relations Code Review Committee
Re: VDLC Submission

Unions promote good jobs, and fairer, safer workplaces. We need a Labour Relations Code that ensures the rights of workers to obtain and maintain union representation and engage in collective bargaining.

To that end, we are pleased to submit our recommendations to you as part of your consultation under Section 3 of the Labour Relations Code. Our submission is respectfully made on behalf of our affiliated unions and their approximately 60,000 affiliated members.

Yours truly,



Stephen von Sychowski
President

**Vancouver and District Labour Council
Labour Relations Code Review
Submission**

Our Position

The Vancouver and District Labour Council calls for a number of changes to the Labour Relations Code which will help to promote fairness and balance. These include:

- meaningful remedies for unfair labour practices;
- improvements to the regulation of workers' right to choose to join a union (including the repeal of employer speech provisions and automatic certification);
- faster timelines when a vote must be conducted by the Labour Relations Board;
- stronger successorship language to prevent contact flipping;
- continuing the ban on replacement workers during labour disputes;
- meaningful bargaining rights for teachers; and
- fairness during partial decertification.

In order for these changes to be meaningful and successful it is imperative that the Labour Relations Board be sufficiently funded and will consistently and transparently enforce these changes as well as existing worker rights.

Recommendations

1. Ongoing Review

The Vancouver and District Labour Council is pleased to participate in this long over-due review of the Labour Relations Code. The last review took place in 2003, during that time the BC Liberal government unbalanced the labour relations regime heavily in favour of employers and allowed this unfair situation to continue for fifteen years while the economy changed rapidly all around us.

That's why, while we welcome this review, we believe that in this rapidly changing economy it is critical that the Section 3 Review Committee continue to be seized of the question of labour relations improvements on an ongoing basis.

2. Proper Funding

The experience of the labour movement in British Columbia, and around the world, shows that while good labour laws are important, enforcement is critical if those laws are going to be meaningful and carry their intended effect. Years of underfunding has created a serious access to justice issue. Delays in certification votes, and the use of mail-in ballots, can allow employers weeks or more to engage in anti-union activities including unlawful interference in order to sway the outcome against unionization. We need adequate funding to ensure that workers have timely access to justice if their rights are infringed upon, and a timely process for certification which minimizes the opportunity for unlawful interference.

3. Timely Decisions (ss. 91, 1278, 159.1)

Often there are significant delays in receiving arbitrators' decisions. This can create access to justice concerns and can compound impacts on workers and prolong workplace tensions unnecessarily. We recommend applying the same timelines set out in the Labour Relations Code for decisions from vice-chairs to arbitrators as well.

4. Unfair Labour Practices and Remedial Certification (s. 14)

When employers unduly interfere in the Charter right of workers to form a union, a vote will be unlikely to disclose the true wishes of the workers. It is therefore clear to us that the fairest and most meaningful method of making workers whole in the fact of unfair labour practices is remedial certification. This would truly remedy the unfair labour practice(s) in question, while serving as a strong deterrent as well.

5. Acquisition of Bargaining Rights – Employer Speech (s. 8)

It is our position that Section 8 of the Labour Relations Code must be repealed. This BC Liberal addition to the Code grants employers unfettered ability to dissuade workers from forming a union. Employers have constant access to workers and can use captive audience meetings and constant anti-union messaging to promote their aims. The same access and tactics were never made available to unions. Section 8 is an infringement of worker's Charter right to associate which should not be allowed to continue.

6. Acquisition of Bargaining Rights – Open (raiding) Period (s. 19)

Section 19 of the Labour Relations Code states that the "open period" during which members of certain organizations may determine to change their bargaining agent is during the seventh and eighth month of the collective agreement. This can cause a lack of clarity as to when this period occurs or may not be readily available to the workers due to a lack of transparency by their bargaining agent. We therefore recommend that the open period laid out in Section 19 be set at a regularly occurring time in the calendar year.

7. Acquisition of Bargaining Rights – Membership Cards (s. 24)

The current requirement, implemented by the BC Liberals, to have a certification vote impinges on the right of workers to join a union. Following the implementation of this change, unfair labour practices rose dramatically and certifications dropped by approximately 50%. The effect of the requirement to hold a vote is that workers, having already made the decision to sign a union card, are subject to a de-facto campaigning period leading up to the vote wherein employers engage in the types of activities discussed in 4 and 5 above in order to change the outcome of the vote.

We recommend that union certification based on membership cards alone be restored.

8. Acquisition of Bargaining rights – Threshold for Certification and Faster Vote (s. 24)

We recommend 50% +1 as an appropriate threshold for automatic certification based on membership cards alone. In cases where this threshold is not met, we recommend that a vote be held within two working days, rather than the current rather lengthy ten days. We also recommend that the vote be held in person rather than by mail-in ballot unless mutually agreed by all parties. These changes will facilitate a timely decision on certification applications and avoid the de-facto campaigning period mentioned in 7 above which impinges on the rights of workers to freely join a union.

9. Successorship Rights (s. 35, Bill 29, and Bill 94)

The successorship provisions of the BC Labour Relations Code stipulate that if an employer sells, leases, or transfers, all or part of their business, then the new owner is bound by any existing collective agreement at the at the date of sale.

However, the existing successorship protections were undermined by the BC Liberals when they passed Bills 29 and 94, which limited the applicability of successorship in the health sector. Current successorship legislation does not apply to contracting out or contract flipping and does not address changes in private service providers.

As a result, certifications and collective agreements are simply disappeared through contracting out. This has created instability and precarity for workers and a reduction of wages and working conditions.

To address this, we recommend the application of Section 35 be broadened to prevent subverting collective agreements through contract flipping. We also recommend the repeal of Section 6 of Bill 29, and Sections 4 and 5 of Bill 94.

10. Replacement Workers (scabs) (s. 67)

The Vancouver and District Labour Council supports the continuation of British Columbia's ban on the use of replacement workers. In jurisdictions where no such ban exists, the power of unions to exert economic pressure in a labour dispute is unfairly undermined by the ability of the employer to hire replacement workers to do bargaining unit work. Meanwhile no similar tactic exists that can be exercised by unions in the case of a lockout. We therefore recommend no change to this section of the BC Labour Relations Code and note that a change to this section would run counter to the spirit of good faith, and put economic stability and labour peace in peril.

11. Essential Services (s. 72)

While we acknowledge that on rare occasions there may be a need for essential services designations due to the fact that some services are essential to the preservation of life. However, historically essential services designations have been abused and mis-used to undermine the exercise of legitimate rights by working people and their unions, for example in the case of teachers and teaching-assistants.

We recommend education be removed as an essential service and that the use of essential services designations be tightly restricted to those services which are absolutely necessary for the preservation of life.

12. Variations of Certification – Partial Decertification Applications (s. 142)

The Vancouver and District Labour Council is concerned about the existing process for partial decertification applications conducted under Section 142. Such applications are not presently expedited in the manner that full decertification applications are, and the rules are unclear. We recommend that the BC Labour Relations Code be amended to prevent such applications from being entertained by the Labour Relations Board. At minimum, we believe such applications should be resolved using the same rules provided by Division 2 of the Code.

Conclusion

We thank the Committee for its work in conducting this much needed review of the BC Labour Relations Code. We are hopeful that the recommendations of the committee will reflect the changes we need in order to have a fair and balanced approach.

All of which is respectfully submitted.