



BC Labour Relations Code Review

BC Labour Relations Code Review Panel:

Michael Fleming (Chair)
Sandra Banister, Q.C. (Member)
Barry Dong (Member)

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Submission by
UNITE HERE! Local 40
Robert Demand, Executive Director



UNITE HERE Local 40 represents over 7,000 hospitality workers across the Province of British Columbia working predominantly in airport food service and hotels. Our members also work in gaming, golf clubs, legions, college cafeterias and construction camps. UNITE HERE represents the interests of hospitality workers who are long-term professionals – cooks, cashier, servers, engineers, front desk agents and room attendants – in BC's booming tourism sector.

According to Destination BC, the tourism industry generated \$17 billion in revenue in 2016, which is a 40% increase over revenues generated a decade ago. Last year, a BC Chamber of Commerce survey ranked tourism as BC's most important sector over the next decade.

Another sign of the dramatic growth in tourism can be measured at key airports in Vancouver (YVR) and Victoria (YVJ). Both airports are reporting record passenger volumes and the need for major expansion projects.

Today, what our members and tens of thousands of unorganized airport and hotel workers have in common is that while their skills and labour are integral to the tremendous economic success of BC's tourism economy, they and their families struggle to keep up with the soaring cost of living and the insecurity of a rapidly changing economy. Hospitality workers are seriously disadvantaged by the current BC Labour Code and denied their Charter rights to freely join a union and truly bargain collectively. Without these fundamental rights, hospitality workers and other private and public sector workers will see their economic security continue to move steadily backwards.

UNITE HERE is looking to this Panel and the Provincial government to make the necessary changes to BC's Labour Code to ensure working people's constitutional rights to join a union, to bargain collectively and to strike are protected, particularly given significant changes in work and employment in the 21st century.

UNITE HERE fully supports the submissions made by the BC Federation of Labour and the BC Building Trades. In particular, we support their specific recommendations for changes to the existing Code, the call for a separate panel to review construction labour relations, and for increased funding and support of the BC Labour Relations Board.

In addition, we are making the following recommendations to the Panel to protect the right of every working person to join a union, achieve a first collective agreement and to enjoy the stability of ongoing collective bargaining.

Protecting the right to join a union and achieve a first collective agreement

To ensure that working people are free to make the choice to join a union, the Code needs to be changed to provide a process free of unnecessary delays or coercion.



To achieve these goals, UNITE HERE believes that card based certification should be restored if a union can show that it has a minimum of sixty (60%) percent support.

If a secret ballot election is required, we believe that there should be speedy, in-person elections within three (3) days achieved by modifying Section 24. There should be no mail ballot elections unless the union and employer mutually agree. To allow for speedy elections and to reduce post-election disputes and delays, we believe that voting lists should be determined by payroll audits conducted in person by Industrial Relations Officers (IROs).

To combat coercion and to protect the constitutional right to join a union, we believe that the current form of employer “free speech” and anti-union captive audience meetings must stop. To achieve this end, we recommend the Province restore the prior Section 8 language and amend Sections 2 & 3 of Bill 42 to eliminate speech and mandatory meetings that are designed to intimidate, coerce and to interfere with the formation, selection and administration of a union. Last, if unfair labour practices occur due to employer interference, the Board will order a remedial certification. s. 14.

Joining a union is only the first step for working people to address their concerns about workplace treatment, safety, respect and economics. They know that they have only won when they reach a first contract. To this end, we believe that Section 45's statutory “freeze” on existing terms and conditions should be extended until a first collective agreement is concluded.

For each of these recommendations to work, proper funding of the BC Labour Relations Board is required. Workers need a Labour Board with enough IROs to carry out immediate, in-person investigations and to conduct votes. There also need to be enough Vice Chairs to hear cases, have time to deliberate and then provide timely decisions.

Protecting the right to ongoing collective bargaining

For decades, changes in BC Labour Code and other legislation have favoured certain employers over BC workers and small businesses. By design, past labour code changes have resulted in weakening a working person's right to join a union or achieve a contract. Simultaneously, there has been increased use of contracting out of public and private sector jobs. This has resulted in an alarming decrease in new certifications and a significant drop in private sector union density.

Today's workplace has also changed dramatically. For example, the creation of more part-time jobs and the rising use of new technology is creating more precarious work, greater income inequality and rising levels of poverty for children and the elderly. Our Labour Code needs to change to address the realities of BC's and Canada's economy.



UNITE HERE believes that this Panel and the Provincial government need to strengthen and protect collective bargaining rights. When these rights are protected, working people will have a greater voice and power in their economic lives and will benefit not only themselves but their families and communities across BC. We believe that the three key areas to address are extending successorship rights to deal with contract flipping, guaranteeing the right to join or leave a bargaining association, and protecting the right to strike.

Successorship

Our experience is that the initial contracting out of workers and then subsequent retendering of contracted work, or contract flipping, was designed to eliminate union certification and to replace existing workers with new, lower wage workers. UNITE HERE believes, like other Unions, that Section 35 of the code needs to be rewritten so that successorship protection applies to workers whose jobs are contracted out, retendered or contracted back into a business so that the wages, benefits and rights of their collective agreement are binding on any new employer. We recommend that the code is broadened in a similar fashion to what has been implemented in Ontario to provide successorship for building maintenance, food, security and health (including long term residential care) sectors.

UNITE HERE also supports the repeal of statutory successorship exemptions in health care and the repeal of Section 6 of Bill 29 – Health and Social Services Delivery Improvement Act and Sections 4 and 5 of Bill 94 – Health Sector Partnership Agreement Act.

Right to Join and Leave a Bargaining Association

Employers have the right to make changes in operation or ownership of their businesses to satisfy their economic needs. We believe that unions and their members must have a parallel bargaining right to be able to deal with changing businesses. Unions need the right to negotiate directly with an employer and this may mean that bargaining within a bargaining association is no longer appropriate. In the hospitality sector, we have seen huge changes over the last twenty years in the ownership and management of hotels as well as changes in service levels and standards. Bargaining associations that made sense twenty, thirty or forty years ago do not necessarily make sense today given changes in the industry. While employers have enjoyed the unilateral right to join or leave a bargaining association, the union has effectively been locked into bargaining relationships that constrain its ability to fairly bargain over changes affecting workers in their workplaces. This is detrimental to workers and needs to change

Currently the Labour Code & Section 43(6) speaks only to accredited bargaining associations. Section 43 (6) provides a relatively simple statutory escape from an accreditation order for any employer named in the order. If the employer satisfies two simple qualifications, the Board must grant the application. It is important to note that this language is mandatory – in the strongest possible terms, it “must grant” the employer leaving an accredited bargaining association. There is no equivalent unilateral right for a union certified to the accredited employer. This same problem exists with a non-accredited bargaining association for a union.



The result is that the union and its members are bound to a specific employer in an indentured relationship.

There is currently no statutory escape for the union or its members to leave a bargaining association. We believe that Section 43 (6) should be broadened to ensure a union the same unilateral right as an employer to leave either from an accredited or non-accredited bargaining association that employers have under the labour code. That is, if they have been subject to either an accredited or non-accredited bargaining association for at least two years, and have given nine months' notice to the bargaining association that they wish to no longer negotiate with a specific bargaining association, then the Board must grant the order. That will better ensure workers' right to freedom of association under section 2(d) of the Charter.

Right to Strike

We believe that all Unions must have the right to strike. This is fundamental to our ability to fairly sell our labour and guarantee years of labour peace and stability to employers in exchange for the best possible collective agreement. We believe that a cornerstone to this in BC is to continue the protection against replacement workers to do bargaining unit work during a strike, so we recommend there be no change to Section 68. We also believe that the Labour Code Section 65's restrictions on secondary picketing should be repealed and modified to ensure workers the right to freedom of expression under sections 2(b) & (d) of the Charter.

Lastly, UNITE HERE supports the repeal in Section 72 of the designation of K-12 classroom teachers and assistants as an essential service and the greater restriction on the use of essential services designations outside of the health care sector.

In conclusion, UNITE HERE thanks the Panel for hearing our submission and we are willing to provide any further clarification or input that can help with this review and to implement much needed changes to our BC Labour Relations Code.

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