iuoe
LOCAL 115

November 30, 2018

Sent by email to: LRCReview@gov.bc.ca.

The International Union of Operating Engineers, Local 115 welcomes this opportunity to provide feedback on the Fleming, Banister & Dong Panel's Recommendations for Amendments to the Labour Relations Code.

Introduction:

The Operating Engineers support many of the recommendations made by the Panel. We are however disappointed by the Panel's cursory treatment of the Construction Industry and by the Panel's failure to engage in the issues involving unions of convenience.

The Operating Engineers asks that the Government implement the positive changes recommended by the Panel and have independent reviews conducted of both the construction industry labour relations and of unions of convenience.

General Recommendations

The Operating Engineers support the positive recommendations for changes to the Code and in particular, support the following recommendations.

Recommendation No. 3 Employer Communication with Employees

- Limiting anti-union employer campaigns will improve access to collective bargaining and help to restore employee choice.

Recommendation No. 12 Successorship

- Protection of workers when contracts are re-tendered is needed to protect marginalised workers and maintain a modern Labour Relations Code.
- While we support this recommendation, there is no apparent policy reason for limiting this protection to certain industries as recommended and we support its general application.

International Union of Operating Engineers Local 115 | Brian Cochrane - Business Manager, Wayne Mills - President
Tel: 604.291.8831 Fax: 604.473.5235 | 4333 Ledger Avenue, Burnaby, BC, Canada V5G 3T3 | www.iuoe115.ca

Recommendation No. 14 – Statutory Freeze of Terms and Conditions after Certification

- Extending the post-certification statutory freeze provision from 4 to 12 months recognizes the need for stability when a group of workers is trying to achieve a first collective agreement. It also recognises that first Collective Agreements now take longer than 4 months to negotiate. The post certification statutory freeze is a minimal restriction on a business and the benefit to workers outweighs this minimal interference.

Recommendation No. 18 – First Collective Agreements

- Removing the strike vote requirement to access first collective agreement mediation will facilitate the cooperative resolution of first collective agreement disputes and will eliminate the need for what can be seen as a provocative strike vote.

Recommendation No. 19 – Sectoral Collective Bargaining

- We join in the call for the immediate appointment of the single issue commission to examine Sectoral Collective Bargaining.

Recommendation No. 21 Essential Services and education

- While education is important, it is not immediately essential for the life, health, and safety of the people in the Province. The removal of education from the essential services provision will restore educators' and support workers' rights under the Code.

Recommendation No. 29 - Resources for the Labour Relations Board

- Restoring funding to the Board is needed to allow the Board to properly discharge its important role. With restored funding in place, the Board would be able to investigate the trade union status of unions of convenience and investigate suspect certification applications as described below.

Need for a Construction Industry Review

The Operating Engineers support the calls for the formation of an independent panel to review construction industry labour relations.

The Fleming, Banister & Dong Panel did not engage the unique labour relations issues which are faced by construction workers and their unions. Instead, the Panel concluded that: "The construction industry was extensively reviewed in 1992, 1998 and 2012. Accordingly, a further review of the construction industry is not warranted at this time."

With respect, the construction industry was not reviewed in 1992 or 2012. The 1992 Report did no more than defer consideration of the construction industry (1992 Report page 59). The 2012 report flowed from a Section 41 inquiry (i.e., certification of council of trade unions) and that enquiry had a strictly limited scope and focus. It was not a general review of construction industry labour relations – instead, it simply looked at how to try to improve the wildly dysfunctional bargaining structure left when the Liberals gutted the construction-specific provisions of the Code in 2001.

The only comprehensive review occurred in 1997. The Construction Industry Review Panel (Lanyon & Kelleher) concluded that construction specific labour relations legislation was needed and recommended a comprehensive scheme of construction labour relations legislation. These recommendations were acted upon and they resulted in what became Part 4.1 of the Code. This Legislation addressed the unique nature of the construction industry and provided a legislative scheme which allowed construction workers to access their rights under the Code.

When the Liberals were elected in 2001, they repealed Part 4.1 of the Code and enacted Section 41.1 & Regulation 3.1 which intentionally favoured employers and were designed to inhibit access to meaningful collective bargaining. As the then Minister of Labour said in the Legislature at the time, "let's be clear on what we are doing here. We're returning the situation to pre-1998."

The pre-1998 situation that lacked construction specific labour relations legislation and required comprehensive review is the situation we remain in today.

Changes are still needed and we call for an independent review of construction industry labour relations.

Unions of Convenience

The use of unions of convenience to avoid employee choice remains an important issue for the building trades and the trade union movement more generally. Despite this, the Panel did not address this issue.

The problems generated by unions of convenience were recognized in the 2013 Sims Report from Alberta: "Alberta Construction Labour Relations Review" and in the 1996 "First Interim report" of the construction industry review panel (Kelleher & Ready Panel) in British Columbia. The Kelleher & Ready Panel heard from a number of workers about the problems with the Canadian Iron, Steel and Industrial Workers Union (CISIWU) in particular. Based upon the submissions before it, that Panel recommended that the Board look into the trade union status of CISIWU. The Board did start that review but it was never completed. CISIWU remains in existence today having never been subjected to the scrutiny recommended by the Kelleher & Ready Panel.

The Christian Labour Organization of Canada (CLAC) also continues to be recognized as a trade union. Despite continuing questions about the undemocratic nature of its locals and despite being suspended by the International Trade Union Confederation, the Board has not conducted any meaningful investigation into the propriety of its trade union status.

In our presentation to the Panel we highlighted a number of cases which show some of the continuing problems associated with unions of convenience.

0692316 B.C. Ltd., BCLRB No. B1/2005, ("Flatiron")

Flatiron is a large international construction firm that came to BC 12 or 13 years ago to bid on large construction projects. At the time of this decision, Flatiron was in the process of bidding on the $600 million Sea-to-Sky Highway project. The project was expected to employ around 700 employees.

Before commencing the work it came to the province to perform, the "Employer ha[d] two employees working under a subcontract with Tercon Construction Ltd. to carry out erosion control and complete signage on a project to upgrade part of Highway 97 and Highway 97A north of Vernon, B.C." Based upon this small bit of work, the CLAC applied for a province wide certification for Flatiron which was successful.

We and other trades applied to intervene in the certification application to explain to the Board the nature of the Employer's operation but our application for standing was denied and the CLAC was certified.

Flatiron went on to perform large construction projects with CLAC as the bargaining agent for all of their employees.

Saipam

This was another case where a large multi-national construction company came to BC and appears to have sought out a relationship with CLAC before engaging in the real work it came here to perform. In this case however we were eventually given standing and the Board eventually conducted an investigation into the CLAC's application for certification. The Board found that:

"The undisputed facts and submissions make clear that the beam fabrication work performed by the six Saipem employees in the summer of 2015 at a yard in Dawson Creek was not done on a construction site or as part of a construction project. I find it cannot accurately be described from a bargaining unit appropriateness perspective as construction work. In all the circumstances, the essential nature of the unit is not construction, and accordingly, a province-wide certification is not warranted on that basis."

Based on this finding the Board dismissed the CLAC's application for certification.

Dunoon

This is another case where we sought standing. In a sense, *Dunoon* is the mirror image of the Flatiron line of cases. This was a first application for certification by the Canada West Construction Union. The Canada West Construction Union is run by a man named Ken Bearg, a former CLAC representative who is also the Director of Labour Relations for Canadian Work Strategies. Canadian Work Strategies shared an address with the CWCU and advertised (apparently to employers) its "creative labour relations frameworks".

Before the Board, we submitted that there was "no evidence that Dunoon has any operations at all. Furthermore, although Dunoon claims to have one employee, we said that there is no evidence Dunoon has any employees and, as such, "no certification should be issued". We also claimed "there is no indication that CWCU has been in the region or that it has conducted any kind of organizing"."

Despite these and other submissions, we were denied standing and the CWCU was granted certification apparently confirming their status as a trade union with no apparent investigation into their representative nature.

Unions of convenience continue to thrive in British Columbia. The Operating Engineers believe that unions of convenience undermine workers' rights under the Code and the Operating Engineers call for the immediate appointment of a Panel to investigate unions of convenience.

Raids in Construction

Tied to the issue of unions of convenience is the issue of raiding. As the cases we describe demonstrate, employers often seek out unions of convenience and enter into bargaining relationships with them. This can effectively insulate an employer from the organising efforts of unions and prevent construction workers from achieving effective representation.

In addition to the need for an investigation of unions of convenience, the Code needs to be updated to prevent employers from circumventing employee choice. The Panel's recommendation to change the raid window in construction to the summer is a good example of such an update. One of the tactics used by employers and their unions of convenience to defeat employee choice in construction is the establishment of a winter raid window. Construction is a seasonal industry and few if any employees are retained over the winter. The recommendation for a legislatively mandated summer raid window in construction will undermine this tactic and facilitate employee choice. The Operating Engineers support the recommendation for a summer raid window in construction.

The Operating Engineers do not support the Panel's other recommendations regarding raiding in the construction industry. Specifically, we do not support the recommendation removing the annual raid window or the recommended definition of construction.

The removal of the annual raid window will undermine employee choice and will encourage manipulation by employers and their unions of convenience. As described above, participating in a raid is often the only way for construction workers to participate in the selection of their bargaining agent. The recommended limitation could potentially limit raiding to once every three years. Few construction projects last more than three years and the removal of the annual raid window would effectively disenfranchise many construction workers.

The Panel also recommended the inclusion of a restrictive definition of construction without explanation. No one had publicly asked for the inclusion of a definition of construction and there was no opportunity to provide input on the recommended definition.

There is currently no definition of "construction" in the Code. The Labour Relations Board has developed a body of jurisprudence defining the scope of the construction industry for labour relations purposes and to our knowledge, no one identified a need to change or codify that definition.

Despite this, the Panel proposed a new definition of construction.

The last time the Code defined construction was under Part 4.1 of the Code. That definition was and is largely consistent with the Board's jurisprudence regarding the scope of the industry. The definition proposed by the Panel however has been significantly narrowed. It has exempted all maintenance work from the definition of construction (instead of simply routine maintenance); it has removed repair work from the definition; and, it has exempted delivering material at a construction project.

The narrow definition proposed by the Panel is not consistent with the traditional scope of constructions for labour relations purposes and it should not be adopted into law.

Conclusion

The Operating Engineers support many of the general recommendations made which will modernise and begin to restore balance to the Code. The Panel did not however address the problems associated with unions of convenience and did not effectively address the unique problems faced by construction workers and their unions. We therefore ask that separate, independent panels be convened to address these issues.

Respectfully submitted by the International Union of Operating Engineers Local 115.

Brian Cochrane
Business Manager