

Operating Engineers, Local 115 comments on issues relating to the construction industry in the August 31, 2108 Recommendations for Amendments to the Labour Relations Code

Need for a Construction Industry Review

The Panel concludes their remarks on construction by stating: “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. It was last reviewed over 20 years ago. 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 removed part 4.1 of the Code.

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 construction labour relations legislation. These recommendations were acted upon and they resulted in what was 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When the Liberals were elected in 1991, they repealed Part 4.1 of the Code and enacted Section 41.1 & Regulation 3.1 which were intentionally unbalanced and designed to inhibit access to meaningful collective bargaining. As the then Minister 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.”

This is where we are still at today with respect to construction labour relations - 1998 - a time when the only comprehensive review of construction labour relations concluded that changes were needed.

Definition of Construction

There is not currently a 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 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 was not requested by anyone in their submissions, is not consistent with the traditional scope of constructions for labour relations purposes and it should not be adopted into law.

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.

This issue was recognized in the 1996 “First Interim report” of the construction industry review panel (Kelleher / Ready Panel) which heard from a number of workers about the problems with the Canadian Iron, Steel and Industrial Workers Union (CISIWU). 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 and CISIWU remains in existence

today – and that is shameful.

The Christian Labour Organization of Canada (CLAC) also continues to recognize as a trade union without meaningful investigation by the Labour Board despite continuing questions about the undemocratic nature of its locals and despite being suspended by the International Trade Union Confederation.

In our submissions to the Panel we highlighted a number of cases which show 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, they were 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. ("Tercon") 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 cert 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 that CLAC’s application for certification.

Dunoon

This in another case where we sought standing but it is in a sense 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 name Ken Bearg, a former CLAC representative also the Director of Labour Relations for Canadian Work Strategies.

Canadian Work Strategies shares an address with the CWCU and advertises (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.

The Operating Engineers are asking that the funding for the LRB be restored and that the panel recommend that the Board investigate both the trade union status of unions of convenience and all suspect certification applications.

Raids in Construction

Tied to the issue of Unions of convenience is the issue of raiding. The panel accepted the need for a summer raid window in construction but then limited that window to the third year of a collective agreement.

This limit on employee choice is particularly inappropriate in construction – it effectively insulates employers with unions of convenience and encourages manipulation.