

New amendments to *Labour Relations Act* passed

Employers and unions can expect a rise in decertification applications as a result of the passage of another series of amendments to Ontario's *Labour Relations Act*. Bill 139, the *Labour Relations Amendment Act, 2000*, came into force on December 30, 2000. (See also "[Proposed Amendments to the Labour Relations Act](#)".) The legislation, which the government states will enhance workplace democracy and foster a more competitive business environment, passed with surprisingly little opposition from organized labour.

FACILITATING DECERTIFICATION

Expanded open period

The amendments include a number of provisions that improve the prospects for those wishing to decertify their bargaining agent. The window for making decertification applications will be extended to the last three months of the operation of the collective agreement, from the current two months. Parallel changes are made with respect to the period of time during which another union may apply to displace the union as bargaining agent.

Publicizing decertification procedure

Within one year of the Bill's enactment, the Ministry of Labour will be required to produce a document outlining the decertification procedure. The information contained in the document is to include

- who may make an application for decertification;
- when the application may be made; and
- the Ontario Labour Relations Board rules regarding the decertification procedure.

Unionized employers must make reasonable efforts to post a copy of the document in a conspicuous place in the workplace, to provide a copy once a year to all employees represented by the union, and to provide copies to represented employees on request. None of these actions shall be deemed an unfair labour practice under the *Labour Relations Act*.

Decertification and first contract arbitration

Where a newly-certified union is unable to negotiate a first collective agreement with the employer, the new Act provides that either party may apply to the Board for first contract arbitration. It also provides that, if no collective agreement has been reached by one year after certification, employees may apply to have the union decertified. Under the old Act, in circumstances where both applications for first contract arbitration and decertification had

been filed, the Board could decide which matter to consider first.

Under the new law, the Board must now deal with the decertification application first. The practice of the Board had usually been to consider the arbitration application first. If the Board granted the first contract arbitration, the decertification application would automatically be dismissed. The change deprives unions of an important means of protecting themselves from decertification.

Separate ratification and strike votes

A climate favourable to decertification is fostered in other ways. One is the provision requiring that strike and first contract ratification votes be taken separately. Under the old Act, unions were permitted to combine a vote to ratify a proposed collective agreement with a strike vote. This meant that, in some cases, union members had no choice but to vote for a strike if they did not accept the employer's offer.

By putting an end to the practice of combined votes, the new provisions will likely have the effect of leaving a weak, fledgling union exposed to decertification. This is because it will be in the unenviable position of being unable to negotiate a collective agreement acceptable to the membership, and unable to strike to achieve a better one.

Disclosure of union officials' salaries and benefits

The new Act requires the disclosure of annual salaries and benefits over \$100,000 of all officers and employees of parent and local trade unions in Ontario, as well as teachers' associations, employee associations in the fire, police and college sectors, unions in the Ontario Public Service, and other organizations to be listed in the regulations.

Unions are to submit statements containing the amount of salary and benefits paid to every employee earning over \$100,000 to the Minister of Labour by April 1 of the year following the year in which the salary and benefits were paid. The Minister may make the information public or employees may request the information directly from their union.

Some observers have pointed out that these provisions appear to be aimed at promoting membership dissatisfaction with union officials. Again, the goal is apparently to create an environment favourable to decertification.

CERTIFICATION

Under the old Act, while there were restrictions on when a union could reapply for certification after an unsuccessful attempt, there were no such restrictions on when another union could apply to be certified for the same bargaining unit.

The amendments will now impose a mandatory bar of one year for certification applications by *any* union if

- a union withdraws its application for certification for the same group of employees twice in a six-month period before a vote is taken;
- a union withdraws its application after a representation vote; or
- a union has had an unsuccessful representation vote and its application is

dismissed by the OLRB.

In Our View

Bill 139 also contains provisions specific to the construction industry. Among these are:

- redefinition of the term "non-construction employer" so as to allow municipalities, school boards and banks to apply to the Labour Board to remove themselves from the construction provisions of the Act;
- amendments to the Act's project agreement provisions to allow multiple projects to be included within the terms of a single project agreement and to cover non-construction work; and
- clarification that section 8.1 of the Act, the procedure for dealing with employer challenges of the union's estimate of the number of individuals in the proposed bargaining unit, applies to certification applications in the construction industry.

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