

Bill 69 - Labour Relations Amendment Act (Construction Industry), 2000

Bill 69, the *Labour Relations Amendment Act (Construction Industry), 2000* received Royal Assent on December 4, 2000. All provisions, except those related to mobility rights/hiring halls were proclaimed in force on December 16, 2000. The following provides a summary of the significant amendments contained in Bill 69:

Single Employer Declarations/Sale of a Business

Key man" provisions

"Key man" refers to an individual whose expertise is so significant that it is considered the main business asset for the purpose of single employer applications and sale of a business determinations. The construction industry had expressed concern that the Ontario Labour Relations Board ("OLRB") had determined whether an individual is key to an operation in a manner that hindered the formation of new companies and the mobility of personnel between companies.

Bill 69 sets out the criteria to be applied by the OLRB for determining who is "key" in single employer and sale of a business hearings. The new Act directs the OLRB to not consider any family relationship between an individual in one company and an individual in the other company.

The OLRB is now required to observe the following criteria when deciding disputes under the single employer and sale of a business provisions, where a key individual is the basis of the union's position:

- the length of hiatus between when the individual was a key individual with the one entity and being a key individual with other entity or entities;
- whether the key individual occupied a formal management role with the first entity; and
- whether the first entity was able to carry on business without substantial disruption or loss when the key individual ceased to be involved with that entity.

Residential Construction Industry in Toronto and surrounding area

To avoid staggered strikes which affected this industry, Bill 69 provides for a common expiry date for all the residential construction trades in the designated areas. The designated areas are: the City of Toronto, the Regional Municipalities of Halton, Peel, York, Durham and the County of Simcoe.

The collective bargaining system in the greater Toronto area residential construction sector would be changed by the following amendments:

- All collective agreements are deemed to expire on April 30, 2001 if they are (a) in effect when the Act comes in force or would come into effect before April 30, 2001, and (b) expire before April 30, 2004.
- All new agreements would be for a term of three years and have common expiry dates. The common expiry date will run in three-year cycles, with the next expiry date being April 30, 2004.
- Strikes and lockouts are prohibited after June 15, 2001 and if there is no agreement by that date, disputes will be submitted to binding arbitration.
- The parties would be given an opportunity to jointly select an arbitrator and agree on a method of arbitration (ie. mediation-arbitration or final offer selection). Where the parties cannot agree on an arbitrator, the Minister of Labour would appoint an arbitrator. Where the parties cannot agree on the method of arbitration, the method of arbitration shall be as prescribed by regulations.
- These provisions, with the exception of the common expiry dates provision, apply only to the 2001 round of collective bargaining in the residential construction sector.
- At least twice in each year beginning in 2001, the Director of Labour Management Services shall convene a meeting of representatives of employers and unions to discuss matters of interest related to collective bargaining and labour relations in the residential sector of the construction industry.

Regulations deeming abandonment of bargaining rights

The government expressed a desire to remove general contractors outside of the broader Toronto area from working agreements signed before 1980 with building trade unions. According to the government, the Bill 69 amendments respecting deemed abandonment of bargaining rights would address an historically unfair situation and allow these contractors to compete with the growing number of non-unionized contractors in the sector.

Cabinet is given the power to bring forward regulations deeming the bargaining rights held by the union to be abandoned with respect to an employer or a class of employers. The regulations may apply to all, or only parts of, Ontario on the date it comes into force:

- local unions would cease to represent the employees of the employer employed in the ICI sector;
- bargaining rights vested in the employee bargaining agency under section 156 will not be exercised for any purpose relating to the employer or class of employees referred to in the regulation in the area to which the regulation applies; and
- employers referred to in the regulation would no longer be bound by any provincial agreements in the area to which the regulation applies.

Local Amendments to Provincial Collective Agreements - Industrial, Commercial and Institutional (ICI) Sector

Bill 69 provides that employer bargaining agencies may apply to local unions to amend the provincial agreement in the ICI sector in their area if they believe that the terms of the provincial agreement put them at a competitive disadvantage with respect to the kind of work performed, the market in which the work is performed or the location of the work within

the local union's geographic jurisdiction.

Applications for amendments are restricted to the following:

- wages, including overtime pay and shift differentials;
- restrictions on the hiring of employees who are members of another local of the same union;
- restrictions on an employer's ability to select employees who are members of the affiliated bargaining agent;
- accommodation and travel allowances;
- requirements respecting the ratio of apprentices to journeymen employed by an employer;
- hours of work and work schedules.

The employer's application must outline the kind of work, the specified market and the geographic area to which the amendments would apply and must document how the provincial agreement renders it uncompetitive with respect to the work the amendments would apply.

Once an application has been made, no other application is permitted where it would apply to the same kind of work with respect to the same market and same location until six months and 21 days after the day on which the first application was served on the union.

No application can be made during the period of 120 days before the provincial agreement ceases to operate.

The local union can give written approval of the requested amendments. The provincial agreement is deemed to be amended.

The parties have 14 days to reach an agreement on the amendments, failing which the employer may then refer the matter to an arbitrator (either agreed upon by the parties or appointed by the Minister of Labour).

Both parties must submit their final offers, along with supporting documentation to the arbitrator. The hearing is conducted by way of written submissions, but the arbitrator may convene an oral or electronic hearing if he or she believes it is necessary.

The arbitrator must render a written decision within 12 days of being appointed. The decision is to state whether the employer is at a competitive disadvantage due to the collective agreement, and if so, whether any of the parties' final offers would remove the disadvantage. The arbitrator would then be required to make one of the following rulings:

- If only one offer removes the disadvantage, the arbitrator must choose that offer.
- If no offer removes the disadvantage, the arbitrator must select the offer that comes closest to doing so.
- If both offers remove the disadvantage, the offer that deviates least from the provincial agreement is to be selected.

The arbitrator shall not issue reasons for the decision. The amendments to the provincial agreement are deemed to have come into effect the day of the arbitrator's decision. If the employer wishes to apply for further relief with respect to the same work, market and

location, it would have to wait six months to reapply.

Labour Mobility/Hiring Hall

[Note: This section has yet to be proclaimed in force.]

Bill 69 permits an ICI sector employer to hire up to 75 per cent of the workers on a specific project without using the local union hiring hall process. However, this amendment would not apply to any existing provincial agreement which prohibits the use of non-union workers.

Of the workers selected as many as 40 per cent may come from outside the geographic area where the work is located. However, this amendment would not permit an employer to employ an individual who is not a member of a union that "is subordinate or directly related to the same provincial, national or international trade union as the affiliated bargaining agent in whose geographic jurisdiction the work is performed" if the provincial agreement prohibits that employment.

The parties to a provincial agreement are able to agree to decrease one or both of the percentages, however strikes or lockouts to decrease the allowable percentage are prohibited.

The parties are also able to agree to increase the percentages or that the percentages be applied with reference to the total number of employees of the employer who perform work under the provincial agreement during the entire period in which the contract is being fulfilled.

This section does not apply with respect to existing project agreements made pursuant to section 163.1.

For more news about recent developments in Employment and Labour Law, and for information about how our firm can assist you, please visit <http://www.emondhardden.com/>