

Union organizing post-Bill 148

Trends and tactics

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Union organizing post-Bill 148

Session overview

- Bill 148 and the Process of Unionization
- Case Law Update from the Labour Relations Board
- Trends and Tactics

Unionization in 2018

	2007	2017
Unionized Workplaces (CAN)	31.6%	30.4%
Unionized Workplaces (ONT)	28.2%	26.8%
Average Hourly Wage Union	\$23.95	\$30.11
Average Hourly Wage Non-Union	\$19.52	\$25.17

Unionization in 2018

	2007	2017
Unionized Workplaces (CAN)	31.6%	30.4%
< 20 Employees	14.6%	13.7%
20 – 99 Employees	31.7%	30.4%
100 – 500 Employees	43.2%	40.3%
> 500 Employees	54.7%	55.8%

Unionization reforms under Bill 148

- Product of the *Changing Workplaces Review*
 - Mike Mitchell and John Murray
 - 2 years
 - 179 recommendations
- Focus on vulnerable workers in precarious jobs
- Chapter 11: Access to meaningful collective bargaining: the decision to unionize.
- Focus on decline in unionization in the private sector in Ontario
- Success rates of card-based certification vs vote-based certification

Bill 148 and the *Labour Relations Act*

- **Application for Employee List** (section 6.1)
 - 20% support of employees in the proposed bargaining unit
 - Proposed bargaining unit must be an appropriate unit for collective bargaining
 - Employer required to disclose employee names, phone numbers, and emails if in employer's possession
 - Board discretion to order additional information (job title and business address; not home address)
 - Parties must take all reasonable steps to protect its security and confidentiality
 - Mandatory destruction of list within one year of order

Bill 148 and the *Labour Relations Act*

- **Application for Employee List: *OPSEU v University of Ontario Institute of Technology*, 2018 CanLII 41758 (ON LRB)**
 - Proposed bargaining unit excluded “all registered students employed in any capacity by the responding party”.
 - Board held that the focus of section 6.1(7) is to determine whether the proposed bargaining unit *could* be appropriate, not whether it is in fact the most appropriate.
 - Board will not engage in a lengthy analysis about appropriateness.

Bill 148 and the *Labour Relations Act*

- Application for Employee List: *IUOE, Local 793 v Metrix Ready Mix Ltd.*, 2018 CanLII 26723 (ON LRB)

- Union's proposed bargaining unit:

all employees of Metrix Ready Mix Ltd. working in or out of their Ready-Mix operations located in the cities of Toronto, **Newmarket**, and Milton, save and except supervisors and persons above the rank of supervisor; office, clerical and sales staff; quality control staff; batchers, yardmen, dispatchers, mechanics and equipment operators; gravel truck drivers; roll off truck drivers; and dump truck drivers.

- Metrix Ready Mix Ltd. does not operate in Newmarket.
- Board held bargaining unit *could* be appropriate for collective bargaining and ordered production of the list.

Bill 148 and the *Labour Relations Act*

- **Application for Employee List: *Unifor v Hearn Industrial Services Inc.*, 2018 CanLII 31962 (ON LRB)**
 - Employer did not respond to Application for employee list within required timeframe.
 - Board ordered the production of the employee list.
 - Employer requested reconsideration of Board's decision.
 - Union had estimated 70 employees in the bargaining unit. Employer said there were 143 employees in the bargaining unit.

Bill 148 and the *Labour Relations Act*

- **Application for Employee List: *Unifor v Hearn Industrial Services Inc.*, 2018 CanLII 31962 (ON LRB)**
 - Board stated: “The Union has submitted cards for more than 20% of 143 employees, but the dates on some of the membership cards are ambiguous, and certain cards may be stale dated. Therefore it is possible **(although not certain)** that the Union is entitled to the list even if the Board accepts the Employer's estimate of 143 employees.” [emphasis added]
 - Board held the Union was prejudiced by Employer's delay in production of the list.
 - Board dismissed the Employer's request for reconsideration and confirmed direction to produce employee list.

Bill 148 and the *Labour Relations Act*

- **Card-Based Certification** (section 15.2)
 - Election to proceed by cards rather than vote for specific industries
 - Building services provider
 - Home care
 - Temporary help agencies
 - < 40% support = dismissal
 - 40% - 55% = vote
 - > 55% = automatic certification or vote

Bill 148 and the *Labour Relations Act*

- **Card-Based Certification: *Public Service Alliance of Canada v Modis Canada Inc.*, 2018 CanLII 27534 (ON LRB)**
 - PSAC applied for certification through both s. 15(2) – temporary help agency industry, and s. 8 of the *LRA* on the same date.
 - Issue: can a union have two applications for certification proceeding in tandem under two different sections?
 - Problems:
 - Legal questions
 - Different percentages required for votes
 - 15.2(15): the Board may direct a representation vote when it finds it finds that at least 40% but not more than 55% of the employees in the bargaining unit are members of the trade union on the date the application is filed.
 - Two separate votes? What if the results of the two votes are inconsistent?
 - Board resources

Bill 148 and the *Labour Relations Act*

- **Card-Based Certification: *Public Service Alliance of Canada v Modis Canada Inc.*, cont'd**
 - S. 111 (3) Despite sections 7 and 63, where an application has been made for certification of a trade union as bargaining agent for employees in a bargaining unit . . . and a final decision of the application has not been issued by the Board at the time a subsequent application for the certification . . . with respect to any of the employees affected by the original application, the Board may,
 - (a) treat the subsequent application as having been made on the date of the making of the original application;
 - (b) postpone consideration of the subsequent application until a final decision has been issued on the original application and thereafter consider the subsequent application but subject to any final decision issued by the Board on the original application; or
 - (c) refuse to entertain the subsequent application.
 - Board held that trade union applicants in future applications ought to directly address s.111 if filing more than one application, or the Board may postpone or refuse to entertain the subsequent application.

Bill 148 and the *Labour Relations Act*

- **Successor Rights** (section 69.1)
 - Building cleaning services
 - Food services
 - Security services
- If employees are performing services at a particular location, and their employer ceases to provide services at that location, and if similar services are subsequently provided at the same location under the direction of a different employer, that new employer will become party to the existing collective agreement.

Bill 148 and the *Labour Relations Act*

- **Just Cause** (sections 12.1 and 80.1)
 - Prohibited from terminating without just cause in two new instances:
 - i) After certification but before a collective agreement is reached; and,
 - ii) After the commencement of a lawful strike or lockout until a new collective agreement is reached.

Strategies and tactics

- Employee list applications
 - Notify employees immediately
 - Object to the proposed bargaining unit
 - Reserve your rights with respect to a Charter challenge?
- Successor rights
 - Don't inadvertently assume responsibility under a CA by terminating a contract with a building services provider
 - Audit existing services
 - Include notification clauses for certifications

Strategies and tactics

Dos and Don'ts of Organizing

WHAT Co. CAN DO

- Explain certification process (simple majority with no opt-out)
- Provide comparative market data and correct misinformation
- Express a desire to be union-free
- Blank slate bargaining
- Listen to employees and be alert to organizing activities and meetings
- Prevent non-employee union organizers from being on Company property
- Prevent solicitation during work time
- Manage in the normal course, including discipline for cause

WHAT Co. CANNOT DO

- Threaten explicitly or implicitly the loss of jobs, reduction of income, discontinuance of privileges or benefits because of union activity
- State that the Co. will not negotiate with the union
- Use a third party to engage in any activity that is otherwise unlawful for the Co.
- Intentional assignment of undesirable work to union supporters
- Promise improvements to terms of employment in return for voting no
- Captive audience meetings or employee inquisitions

Q & A

Thank you

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