

Bill 148 Webinar Series

Union Certifications: What employers need to know

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Union Certifications

- Union as a business
- 5 core principles of union organizing
- The Certification process
- What an employer can and cannot do

The union campaign as a business

- A union is a business; avoid ideological preconceptions
- Union revenue is derived from union dues, which are owed by all employees in the bargaining unit
 - \$500-\$1500 per year
- Multinational organizations with multi-million dollar holdings (e.g. – Ontario Teacher's Pension Plan sells its majority ownership in Maple Leafs for \$1.32 billion)

The union campaign as a business

- Because campaigns are typically responses to broad issues, they are built on promises for future changes and improvements.
- The Trinity:
 - Better wages
 - Improved benefits
 - Greater job security

The union campaign as a business

- 70 years ago, employer responses to organizing was often tied to suppression; stop the discussion from taking place, flex financial power, “quell the uprising”.
- **Same approach today is neither lawful nor effective**

The union campaign as a business

- Instead of suppressing interest, we address it head on.
- We acknowledge our employees' rights to choose for themselves, and we work to be a source for reliable information and facts about our business and the certification process.

**Our primary goal is to help workers
make an informed decision.**

5 core principles of union organizing

- Every person has the right to choose whether to join or not to join a union.
- No one can use intimidation or coercion to compel a person to join or not to join a union.
- An employer cannot interfere with the formation, selection or administration of a union.
- An employer can voice its views on unionization, but it cannot use threats, intimidation, coercion, promises or undue influence.
- No soliciting support during working hours at the workplace.

Purpose, methods and goals of a campaign

- Purpose
 - Solicit employee support for union
- Goal
 - **Obtain signed union cards:** cards that are filed along with an application for certification to the Labour Relations Board as proof of employee support
- Methods
 - In-house and external organizers
 - Information bulletins
 - Social media

Certification process

- Goal is to obtain enough signed union cards to support an application for certification to the Labour Relations Board.
 - Application by Union
 - Response by the Employer
 - Vote conducted by the Labour Board
 - Board hearings as necessary to determine any outstanding issues and the result of the vote

Certification process

- **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

Certification process

- **Application for certification**
 - Describe the proposed bargaining unit
 - one that “could be appropriate for collective bargaining”
 - Estimate number of employees in the unit
 - Propose vote location(s) and time(s)
 - Include membership evidence (signed cards) that show at least 40% support of the proposed unit
 - cards are kept confidential by the Board

Certification process

- **Employer's response to application**
 - Agree or disagree with the proposed bargaining unit
 - Actual number of employees in the unit
 - Object to 40% if appropriate
 - Agree or disagree with proposed vote location(s) and time(s)
 - List of employees (position, status, RTW)
 - Filed within 2 business days of Application

Certification process

- **Certification vote**

- "Quick Vote" held 5 business days after filing date
 - Ex: Application on Friday, vote held the next Friday
- Overseen by a Labour Relations Officer from the Board
- Secret ballot vote
- If a question arises whether someone is entitled to vote, ballots may be segregated until the Labour Board determines the issue at a later date.

Certification process

- **Certification vote**

- Outcome of the vote is determined solely by the majority of those who vote (50%+1)
- Ex: 1000 employees in the unit
 - 100 employees vote
 - 51 vote yes
 - All 1000 employees are in the union

Bill 148 and card-based certification

- **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

Unfair labour practices

- The things we say and do during an organizing campaign can have significant consequences
- Recall 5 basic laws of union organizing
 - No intimidation, coercion
 - No discrimination due to union involvement
 - Cannot exercise undue influence
- Anything that interferes with an employee's right to free choice on unionization

Unfair labour practices

- Employer (or union) activities that breach the 5 principles are called Unfair Labour Practices (ULP) under the *Labour Relations Act*.
- Remedies:
 - Damages
 - Reinstatement
 - Automatic Certification

Effect of certification

- Union becomes the bargaining agent for all bargaining unit employees.
- Company must negotiate a collective agreement with the union to establish terms and conditions of employment.
- Statutory freeze while agreement is negotiated
- Collective agreement replaces and supersedes any prior employment agreements.
- Effectively the end of the 1:1 relationship

Management's role

- You are the face and voice of the company
- Statements that you make are attributed to the company
- You do not have complete freedom of speech.

Management's role

- Your freedom of speech is limited by:
 - no threats, intimidation, or coercion;
 - no promises; and,
 - no undue influence

Do's and don'ts

- “Bargaining begins with a blank slate – some things may get better, some may get worse, some may stay the same. There is no way to know in advance, and there are no guarantees.”
- We can always speak to **process**

Do's and don'ts

- “You do not need to sign a membership card in order to be allowed to vote.”
- We can always correct misinformation, and doing so builds our credibility

Do's and don'ts

- “I hope the vote is unsuccessful. The Company was going to roll out a new incentive plan next year.”
- Management cannot promise employees a pay increase, promotion or benefit or special favour in return for not supporting the union

Assignment of undesirable work

- Do not discriminate against employees actively supporting the union by intentionally assigning them undesirable work.
- Exercise of discretion should be consistent, transparent and timely
- Simple explanations go a long way

Neutrality is a positive obligation

- Do not take part in a petition or circular against a union or encourage its circulation.
- Positive obligation on employers to remain neutral

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

Best practices

- ✓ Focus on process, not outcomes
- ✓ Correct misinformation
- ✓ Ensure regular communication between HR and managers
- ✓ Maintain open communication with employees

Thank you



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