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The must-know facts about union certification in construction

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Union certification is a process that can happen extremely quickly, have an extraordinary impact on a business, and, if not addressed lawfully, create significant financial liability for a company.

What does it mean to be unionized?

It means a union has the right to represent employees when it comes to terms and conditions of their employment such as wages, hours of work and overtime. Sometimes it means the company has to meet with the union and negotiate a collective agreement. However, when a company performs work in certain sectors of the construction industry (such as the Industrial, Commercial, Institutional or ICI sector) unionization means the company is automatically bound to the standard industry collective agreement that covers the type of work it performs — there is no negotiation.

To better understand what unionization could mean for your organization, consider the following: (i) review comparable (or the standard) collective agreements in your industry and understand how they would impact your ability to manage your business and its bottom line; and (ii) proactively consult with labour counsel knowledgeable of and experienced with the construction industry. In addition, you should know the following:

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How does union certification work in Ontario?

A union files an Application with the Ontario Labour Relations Board (the "Board") asking to be certified to represent an identified group of workers working for a particular employer. If the union can show it has support of at least 55 per cent of the designated group of employees on the day the union files the Application, the Board will generally certify the union. This means that, provided the union has 55 per cent support, there is not a vote. There is only a vote if the union has support from at least 40 per cent, but not 55 per cent, of employees.

The day the Application is filed is critical. Only employees at work that day, performing work covered by the union's Application, are counted for purposes of determining if the union has met the 40 per cent or 55 per cent threshold.

Once the union files the Application it must send a copy to the company. The company then has only two business days to file its Response, including providing a list of employees in the relevant employee group and deciding what legal positions the company wishes to take on the issues raised in the Application. It is only under the most exceptional circumstances a company will be permitted to file its Response late, and the Board has repeatedly said that ignorance of the requirements, not having seen the Application, being on vacation, or waiting to meet with a lawyer will generally not be acceptable excuses.

What are an employer's obligations?

In addition to filing a Response within two business days, if there is disagreement about who was at work, performing work covered by the Application on the Application date, there may be documents produced, and the employer may be required to file written submissions or attend a hearing. If the company decides not to participate in the process the Board can, and will, make decisions binding the company in its absence.

How can an employer get itself in trouble?

Whether to join a union is a decision to be made by employees, not their employer. The Labour Relations Act prohibits an employer from penalizing an employee because he or she supports being a member of a trade union. Where an employer

has disciplined, terminated or laid off an employee (or taken other negative action) related to union organizing or an employee's support for a union, the Board can reverse the employer's decision. For instance, the Board can reinstate a terminated or laid off employee and order payment of back-wages the employee would have earned had they not been terminated or laid off. Further, if the Board finds the employer's actions amounted to threats or intimidation, the Board can automatically unionize that employer, even where no employees signed union cards.

Bottom line: the stakes are high.

However, becoming unionized is not inevitable. Establishing and maintaining positive employee relations, including a competitive compensation package, is fundamentally important. So, too, is knowing your rights and obligations as an employer and working with labour counsel knowledgeable of, and experienced with, construction labour relations.

For more information contact a member of the construction team at Sherrard Kuzz LLP, visit www.sherrardkuzz.com or call 416-603-0700. Send any comments or feedback on this Industry Perspectives column to editor@dailycommercialnews.com
