Legal Corner

By
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Rights and obligations of accredited employer organizations

In today's construction industry, it is important to understand the rights and obligations of an accredited employer organization, whether your company is bound to a collective agreement negotiated by an accredited employer organization, is a member of one, or whether you represent an accredited employer organization or an organization considering seeking accreditation.

Under the Ontario Labour Relations Act, an employer organization may make an application to become accredited. If successful, that employer organization is granted the exclusive right to represent all employers bound to a particular trade union in a particular area (or areas) of the province, whether or not those employers are members of the employer organization.

For an accreditation application to succeed, an employer organization must be able to show that it represents a 'double majority' within the bargaining unit for which it is applying. This means that the employer organization must be able to prove (usually through written authorizations) that it represents the majority of employers in the bargaining unit, and that those employers employ the majority of employees in that bargaining unit.

Once the double majority test is met, the employer association will be accredited by the Ontario Labour Relations Board. Examples of accredited employer organizations include the Residential Framing Association of Metropolitan Toronto and Vicinity, the Toronto Residential Construction Labour Bureau and the Metropolitan Toronto Sewer and Watermain Contractors Association.

Significant rights, obligations

Accreditation brings with it significant rights, as well as significant obligations. For instance, an accredited employer organization has the exclusive right to negotiate the only collective agreement which employers bound to that trade union (in that area) must apply. However, with that right also comes the obligation to represent all employers bound to that collective agreement fairly. That is, to ensure that it does not treat any employer in the bargaining unit of employers in a manner that is arbitrary, discriminatory, or in bad faith.

Given that almost every decision made by an accredited employer organization will affect different members of the employer bargaining unit differently, the Ontario Labour Relations Board has interpreted the obligation to represent employers fairly as the same as a union's obligation to its members. Namely to:

1. Ensure there is no hostility, ill-will, bad faith or discrimination in the making of decisions;

2. Hear and fairly consider the competing interests; and

3. Be open and honest about decisions that are made.

This does not mean that an employer organization is required to do anything an employer in the bargaining unit asks it to do. However, the employer organization must fully and rationally consider any request.

An employer organization is also obligated to let any employer into membership that wishes to join, unless there is fair and reasonable cause to deny membership. As an example, a personal dislike for the principal of a company would not be considered 'fair and reasonable cause' for denying that company membership in the employer organization; instead, this would be considered both arbitrary and in bad faith.

There is a parallel obligation not to expel a company from membership without fair and reasonable cause. If a decision of the employer organization is challenged, it is the Ontario Labour Relations Board which will ultimately review the propriety of the decision.

An employer organization is permitted to charge initiation fees and dues, provided those fees and dues are not unreasonable or discriminatory (again, as assessed

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Examples of bad faith

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by the Ontario Labour Relations Board if there is a complaint).

Examples of behaviour that would fall within the definition of arbitrary, discriminatory or in bad faith include:

1. Negotiating a clause into the collective agreement for the purpose of damaging the business of one or more employers in the bargaining unit (i.e. a premium on handling a product that only one employer handles); and

2. Refusing to carry a grievance forward against the union because the employer wishing to pursue the grievance is not a member of the employer organization.

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