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Legal ramifications during open period

In Ontario, many construction industry collective agreement negotiations take place every three years. On April 30, current ICI sector collective agreements will expire. A number of agreements in other sectors of the construction industry will expire on that date as well. Negotiations are therefore underway and it is important that every construction employer remain up to date on the progress of the negotiations in their respective sector.

LEGAL PERSPECTIVE

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It is also very important to be aware that during the "open period", the three months prior to the expiry date of the collective agreement, construction trade unions have the legal opportunity to raid or displace other construction trade unions, and construction employees employed under the expiring agreement have the legal opportunity to terminate the union's bargaining rights. For agreements that expire on April 30, the "open period" starts today.

The decision whether or not to conduct a "raid" and file a displacement application lies solely with the trade union. However, it is crucial that every employer know its rights and responsibilities should an application be filed. By all accounts, it sounds as though there may be significant raiding activity during the current open season.

A union that wishes to attempt to raid and displace an incumbent union must serve on the employer and the incumbent union an Application for Certification.

At this stage, the timelines become extremely short, and meeting the Act's deadlines is critical.

Failure to respond, or to respond on time, can seriously affect a company's legal rights. If a response is not filed within the Labour Board's timelines, the employer can lose all rights to participate in the application. This means the employer can lose its opportunity to raise issues regarding which union will ultimately represent the employees.

So, what are the deadlines? Within two business days of receiving an application, an employer is required to serve on all affected parties (including the incumbent union) and file with the Labour Board a legal response. This means the employer has only two business days after receiving the application to make a number of important and strategic decisions, as well as complete, serve and file the response itself. There are extremely few reasons acceptable to the Labour Board that will result in extending these time limits, so as a rule, a response on your behalf must be made within the time limits.

The Labour Board will process the application and determine from the cards filed by the union and the number of employees if there is sufficient support for the application. If the cards filed show 40 per cent or more of the employees support the raiding union, the Labour Board will order a vote and the employees will cast a secret ballot indicating which union they support.

When a vote is ordered, it is usually scheduled to be held between five and 10 days after the application is served. Typically, a vote takes place at the affected worksite(s). The outcome is based on 50 per cent plus one of the employees who cast a ballot.

An employer who intends to file a response will need to consider several critical matters and do so quickly.

Some matters are entirely factual. Others require careful consideration of company objectives and strategy.

Here are a few of the questions to consider:

• To which employees does the application apply?

• What trade or craft is affected?

• Which geographic areas and worksites are affected?

• Which employees were at work on the day of the application?

• What kind of work were the employees performing for the majority of the day of the application? What proof will be required and under what circumstances?

• Which, if any, other parties are affected by the application?

• Where should the secret ballot vote take place?

• On what date and at what time should the secret ballot vote take place?

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