



Legal Corner

By
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Raids, displacements and applications to terminate bargaining rights

'Open period' is upon us. Are you ready?

In Ontario, under the Labour Relations Act (the "Act") construction industry collective agreement negotiations take place every three years. On April 30th of this year, the majority of Ontario's construction sector collective agreements will expire.

Negotiations are therefore under way and it is important for each of you to remain up to date on the progress of the negotiations in your sector.

It is also very important to be aware that during the period February 1 to April 30, 2004 (the "open period") construction trade unions or construction employees have the legal opportunity to raid or displace other construction trade unions and/or terminate the bargaining rights of an incumbent construction trade union, respectively.

As a construction industry employer, do you know what to do if and when this happens at your workplace(s)?

A construction trade union that seeks to raid or displace an incumbent construction trade union, or a group of employees that seek to terminate the bargaining rights of a construction trade union, must serve an application on the incumbent construction trade union, affected employer(s) and any other interested party, and then to file the application with the Ontario Labour Relations Board (the "Labour Board").

The Board is empowered to process the application, assess the support for the application and if there is sufficient support to schedule a secret ballot vote of the affected employees.

Sufficient support means that the construction trade union or group of employees has the support of at least 40% of the employees in the construction bargaining unit.

At this stage in the process the timelines become extremely short, and meeting the Act's deadlines is critical. Failure to respond, or to respond on time, can profoundly affect an organization's legal rights. If a response is not filed in a timely manner, the Labour Board's practice is to accept the application on its face. There are extremely few reasons acceptable to the Labour Board that would result in extending these time limits.

So, what are the deadlines? Within two (2) business days of receiving an application, an employer or trade union is required to serve on all affected parties and file with the Labour Board a legal "response."

A secret ballot vote is then scheduled between five and 10 days after the application is served. Typically, these votes take place at the affected worksite(s). The outcome of either a raid or displacement application or an application to terminate bargaining rights is based on a simple majority of those who cast ballots.

An employer that intends to file a compelling, strategic and useful response will need to consider several critical matters and to do so quickly. Some matters are entirely factual. Others require careful consideration of corporate objectives and strategy. Either way it is advisable that preparation of the legal "response" be undertaken with the assistance of labour counsel experienced in the complex area of construction labour relations.

Important questions

Here are just a few of the questions to consider:

- (i) To whom does the application apply?
- (ii) What trade or craft is affected?
- (iii) What geographic area and worksites are affected?
- (iv) Who was at work on the day of the application?
- (v) What kind of work were the employees performing for the majority of the day of the application?
- (vi) Are any other parties affected by the application?
- (vii) Where should the secret ballot vote take place?
- (viii) When should the secret ballot vote take place?

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Every minute counts

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The purpose of this article is neither to suggest nor to support either type of application. Rather, the purpose is to highlight the importance to employers of knowing your rights and obligations if and when you receive this type of application.

Most importantly, it is absolutely critical that you seek the assistance of your labour counsel immediately. In this delicate framework in which every minute counts, it is important to do everything you can to ensure that those minutes count for your organization, not against it.

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