

# ICI sector preps for open season amid uncertainties

Don Wall January 31, 2019



*This is the first of a continuing series exploring the open season in Ontario ICI collective bargaining launching March 1.*

There's significant uncertainty with lots of speculation in the air as Ontario's 25 construction unions and their employer counterparts operating in the ICI sector prepare for the first collective bargaining "open period" — also known as raiding season — in three years.

That's the view of two labour and employment law experts with experience in the construction sector who were asked for a legal perspective on the two-month period of collective bargaining that will launch March 1 in the unionized ICI sector.

Collective bargaining in the sector is governed by the Labour Relations Act, with the institution of a limited open period leading up to the expiration of collective agreements intended to create predictability for all parties. Three-year collective agreements will expire in the ICI sector on April 30, meaning negotiators from the two sides in each of the 25 unionized domains will be hunkered down to reach new agreements as the deadline approaches.

The negotiations will ensue against a backdrop of possible raids as unions attempt to expand their bases by luring members of other unions, a gambit only permitted during the open period.

Patrick Groom, a partner at McMillan LLP and a specialist in labour law, and labour law expert Keith Burkhardt, a lawyer with Sherrard Kuzz LLP, offered differing takes on the potential implications of moves in the last year by the former Kathleen Wynne and current Doug Ford governments that affected designations in the formwork sector and

will open public projects to broader bidding, and even on how much raiding there might be.

Burkhardt suggested competition from alternative unions and the non-union sector is growing and could affect collective bargaining and also lead to more raids.

“We expect this round of bargaining will be more challenging than in past years,” Burkhardt wrote in a prepared analysis. “We regularly hear contractors say there are a handful of large projects that will keep busy a few large contractors, but few medium-sized projects, which puts significant financial pressure on mid-sized and smaller general contractors and subcontractors.

“We also believe competition from non-union contractors is increasing throughout the province, which means unionized contractors need to pay even more attention to their cost of labour.”

Changes in the Labour Relations Act and construction industry designations will mean raiding in the ICI sector will be limited to attempted incursions by alternative unions such as the Canadian Construction Workers Union, the Building Union of Canada and the Christian Labour Association of Canada, Burkhardt argued.

Groom offered a different take on potential raids.

“The Carpenters’ and the Labourers’ (Labourers’ International Union of North America) have always been the most contentious parties,” he said. “Given the passing of the formwork legislation, and the fact that LIUNA lost a number of members, we really expect there will be a big push with LIUNA trying to recapture those employees and reorganizing those individuals again. But alternatively we also expect a big push for the Carpenters’ to go after those employees.”

Unlike Burkhardt, Groom thought the changes in the formwork designations announced by the Liberal government last May, in which LIUNA’s longstanding exemption was removed, would have a big impact on collective bargaining. He called the formwork issue “earth-shattering” and noted there was actually a “double whammy” that hit LIUNA in the past two years, mentioning a 2017 divisional court decision on formwork that also dealt LIUNA a setback.

The Ford government has announced it would reverse the formwork provisions but the details have not yet been released, Groom said; the word is, he said, the government might be moving on the issue in February.

When all is said and done, look for LIUNA to attempt to gain ground on formwork during collective bargaining, Groom said.

“I would certainly expect we would see more movement on that during this round of bargaining because they are going to want to try to recapture and protect rights to that work because that is a very significant piece of work here in Ontario.”

Employers who work with LIUNA will support the Labourers' efforts on formwork through collective bargaining, said Groom.

"When you are talking about expanding work jurisdiction, the employer bargaining agency has got the same interest as the union, and that is to try and capture everything, because if I am bound to LIUNA I want to get as much work as I can, I want to have as much breadth and scope on the project that I can use," he said.

Burkhardt said his firm does not believe the changes to bidding on public projects contained in Bill 66 will have any material impact on bargaining. The bill will not alter existing fair wage policies nor bargaining rights held with general contractors or subcontractors, he said.

"At most, it will put pressure on the parties to minimize wage increases to attempt to maintain a level of price competition between union and non-union contractors when bidding on public work," Burkhardt stated.

Groom predicted unions may attempt to use side "enabling" agreements in the wake of Bill 66.

"I know there has been some rumbling, heard through the grapevine, some unions might look at doing enabling agreements for public sector work to try and be more competitive with the non-union contractors. Whether that actually happens, we'll wait and see," he said.