



Organizing Do's and Don'ts

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Organizing, UFCW 832



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March 14, 2024

Agenda

- getting started
- access to employees and employer property during the campaign;
- the certification process from start to finish;
- defining the proposed bargaining unit;
- employer rights to communicate during a campaign;
- unfair labour practices during organizing; and
- discretionary certifications.

Getting Started

- Who to talk to and how to do it
 - Employee or Union initiated campaign?
 - Develop internal contacts
 - Communication: gathering information
 - Accurate information is critical
 - Considering cultural issues in determining the best approach

Gathering information is key

- Names, addresses and contact information of all employees
- Identify Union supporters; who is opposed; who might be on an organizing committee
- Existing classifications, the nature of duties in different jobs, and the shift schedules
- Current wage scales, benefits, etc.
- Who is in management?
- What is the financial position of the company?
- Is there a parent company, or any subsidiaries
- Are there any groups that are already organized, and if so, by whom
- Have there been past organizing drives? What happened?

Things to Consider Early In Process

- Federal or provincial jurisdiction?
 - What happens if you are not sure?
- Bargaining unit definition
- Applying for certification or entering into a voluntary recognition agreement?

Getting started – continued

- Develop as much support as possible before drawing attention to the campaign
- Prepare and develop contacts before “going public”

Communicating with Potential Members

- Leafleting
- One-on-one conversations
- House calls
- Phone calls
- Social media
- No union activity during working time
- Use non-working time, such as breaks and before or after shifts

Social Media Cautions

- Keep social media sites up-to-date and current
- Make use of the two-way communication functions of the sites
- Be aware that your usage is subject to the whim of the company that owns the site
- Be careful of trademark violations – remember Employer may be watching
- Privacy concerns – employer ability to view which workers support the drive; employee complaints about union collection of data

Starting Out

- Union representatives have no right of access to the premises: use committee members
- Can seek permit authorizing access in certain situations (e.g. where employees live on employer property)

Issue of permit

21(2) On application therefor, the board may issue a permit to a representative of a union to visit employees who reside on land owned by, or under the control of, their employer or a person who owns or has an interest in the land on which the operation in which the employees are employed is conducted, and the board may make the permit subject to such terms as the board deems advisable.

Starting Out – continued

- Union organizing cannot disrupt work
- Employers may discipline employees where their conduct – including conduct related to Union activity – disrupts the operations

Disruption of operations

33(2) Nothing in this Part authorizes any person to disrupt the ongoing operation of an employer's workplace by attempting, during the working hours of an employee at the workplace, to persuade the employee

(a) to become, or continue to be; or

(b) to refrain from becoming or continuing to be;

a member of a union.

Certification Process – The Application Process

Form A – Memorandum of General Information Required on all Proceedings

Form 1 – Application for Certification

“List L” – Shows, in alphabetical order, the name, address and classification of each affected employee whom, in the opinion of the union, wishes to have the union represent him or her as his or her bargaining agent

Documentary proof as to the wishes of each affected employee in List L (i.e., your membership cards)

List L and the evidence of employee wishes must be certified by the secretary of the applicant Union or another authorized person

Certification Process: CIRB Regulations

- See list of information required in section 33 and 34 of the Regulations

Starting Out: Membership Cards

- Cards prove employee support when an Application for Certification is filed
- Cards should be clear that:
 - Card signer is joining a union
 - Union will represent the card signer in collective bargaining
 - Card signer has been advised of dues and initiation fees
- Cards must be dated within the last six months (s.45 of the LRA, and s.30-31 of the CLC Regulations).

Starting out: Membership Cards

- *Kittson Investments* (Case No 346/88/LRA)
 - Some employees changed their mind about signing card *after* application was filed;
 - Board found that to be “immaterial”, but result would have been different if they had changed their mind *before* the application date.
- The information on the card is confidential; it is provided to the Board for the application, but is not provided to the employer
- Only with the Board’s consent can such information be disclosed

Starting Out: Membership Cards

- Witnessing card signing:
 - Witness should also sign card
 - Do not use supervisor/manager to witness cards
 - No undue pressure to join union
- Note about Form A: declarant must have personal knowledge or have made inquiries of witnesses, that cards were signed in compliance with the Act.

Starting Out: Membership Cards

Caution:

- a) Board may dismiss application or order vote where union:
 - engages in intimidation, fraud or coercion of card signers, or
 - threatens financial or other penalty to compel card signing

- b) Board may reject cards if signers were not informed about dues and initiation fees.

Certification Process

- Whether federal or provincial, Unions need to:
 - Meet the definition of “union” (or “trade union” under the CLC);
 - Make a timely application;
 - Define an “appropriate bargaining unit”; and
 - Have the requisite amount of support.

Certification Process

- Section 40 of the LRA:
 - If at least 40% of employees in the unit wished to have the union represent them, the Board shall conduct a representation vote.
 - If fewer than 40% support, the Board shall dismiss.
- Section 28-29 of CLC:
 - If at least 50% of employees support, then may be certified without a vote
 - If between 35% and not more than 50% support union, then vote is held

Certification Process

In advance of the vote, the Board will conduct a planning meeting to determine:

- Voter's list, including whether some ballots will be sealed
- Form of the ballot
- Polling dates and times (electronic balloting now – unless reason not to)
- Form of notices for the vote and where the notices will be posted
- Identity of scrutineers for Board's information

See Board's Rules of Procedures – section 26(1)

Certification Process

- Voters must be employed on the date of application (and not voluntarily terminate their employment before the vote)
- Laid off employees must not be eligible to vote on certification (*Alpine Roofing & Building Contractors Ltd. Case No. 195/76/LRA*); eligibility depends on continuing interest in the workplace
- No “electioneering” or distributing printed material for the purpose of influencing the vote - on the day of the vote

Certification Process

- Employees have a limited right to object to an application for certification:

The Labour Relations Act

47(2) Any employee in a unit proposed by a union or determined by the board to be appropriate for collective bargaining may file an objection to an application for certification by the union on the ground that there was intimidation, fraud, or coercion, or the threatened imposition of a pecuniary or any other penalty, by the union or any person acting on behalf of the union, involved in the solicitation of union memberships.

Appropriate Bargaining Units

- Importance of scope: requisite support depends on how the bargaining unit is defined
- Must be *an* appropriate bargaining unit
- Certain individuals will always be excluded from *any* bargaining unit
 - A person who performs management functions primarily
 - A person who is employed in a confidential capacity in matters relating to labour relations

Appropriate Bargaining Units

- Employer may prefer larger bargaining unit to *dilute* the Union's support
- Relevant considerations:
 - views of the Employer and the Union
 - “community of interest” among employees
 - organizational structure of the Employer
 - presumption against “fragmented bargaining units”
- Accurate information is critical

Appropriate Bargaining Units

- *Manitoba Lotteries Corporation*, [2011] M.L.B.D. No. 23):

Considerations include whether or not the employees in the bargaining unit applied for share a “community of interest”, taking into account factors such as:

- nature of the work performed;
- conditions of employment;
- the skills of employees;
- geographic circumstances;
- the organizational structure of an employer; and
- matters relating to functional coherence and interdependence.

Employer Response to Organizing Campaign

- Once an employer is aware of a campaign, discipline and communication with employees are closely scrutinized
- Employer conduct must be scrutinized in context
- Union may consider a “protection letter”
- Right to free speech
- Right to discipline as usual, as long as no anti-union animus

Unfair Labour Practices

- *The Labour Relations Act* defines conduct that is an unfair labour practice
 - *Some apply to Unions, others to Employers*

Union Unfair Labour Practices

- S.5(3) – interference with employees’ rights
- S.8 – discrimination by Union against a person for involvement or participation in proceeding under the Act, or for exercising a statutory right (e.g. objecting to certification)
- S.19 – using intimidation, fraud, or coercion, or the imposition of a pecuniary or any other penalty, to compel or induce a person to become or refrain from becoming, or to seek to be, a member or officer of a union or to deprive any person of the person’s rights under this Act

Consequences for Union Misconduct

Pony Corral Restaurant, [1998] M.L.B.D. No. 17

- The Union sought discretionary certification because the employer committed unfair labour practices
- There were allegations of unfair labour practices by both the Union and the Employer
- The Union argued there were “captive audience” meetings
- The Board found that there was a violation of the “statutory freeze” by the Employer, but dismissed the other unfair labour practice allegations (either against the Union or Employer)
- The Board found that since the Union did not appear before the Board with “clean hands”, its request for discretionary certification was rejected, and a vote was ordered
- The Union made comments to employees to the effect that the owners were associated with criminal elements and cautioning employees of possible physical violence by the owners

Employer Unfair Labour Practices

- Ensure your contacts tell you of Employer's tactics
- Examples of ULP include:
 - Suggesting wages will be cut if a Union is certified
 - Suggesting that business will be closed or jobs outsourced if a Union is certified
 - Terminating employees involved in the organizing drive
 - Singling out employees involved in the organizing drive
 - Providing wage increases or other employment benefits to encourage people not to support the Union

Employer Unfair Labour Practices

- A combination of many small acts by Employer can support finding of unfair labour practice: document everything
- Employer conduct scrutinized more closely during the organizing stage than when a Union has established bargaining rights
- Employer must have “squeaky clean hands” in assessing whether its conduct was motivated by anti-union animus

Employer Unfair Labour Practices

- s.6 prohibits interference in the formation of a Union (among other things)
- s.17 prohibits (among other things) intimidation, by coercion, by threat of dismissal or any other kind of threat, or by a promise, or by a wage increase, or any other means, to compel or induce any person to refrain from joining a Union

Employer Unfair Labour Practices

- An employer is permitted to make statements of fact or an opinion reasonably held with respect to the employer's business (s.6(3)(f))
- Nothing in *The Labour Relations Act* prevents a person expressing views, so long as there is no intimidation, coercion, threats, or undue influence or interfere with the formation or selection of a union (s.32(1))
- Finally, it must be the employer, or someone acting on behalf of the employer, engaging in the conduct that the Union is concerned about

Employer Unfair Labour Practices

- Examples of prohibited communications:
 - *Winnipeg Dodge Chrysler Ltd.* [2014] M.L.B.D. No. 21
 - After the union’s certification application, employer began a series of captive audience meetings with employees
 - Employees were subjected to the Employer's opinions about the union and the merits of unionizing, and were threatened
 - The Board found that the employer was guilty of unfair labour practices, and the true wishes of employees could not be ascertained by a vote
 - The Board issued a discretionary certification, ordered a payment to the union, and ordered a payment of \$250 to each employee in the bargaining unit for which the union applied
 - *Praxair Canada Inc.*, [2005] M.L.B.D. No. 9
 - Employer sent letters to employees and held “captive audience meetings” that were attempts to interfere with the formation of a union
 - communications had a “chilling effect”
 - Board concluded communications were not simply information or beliefs reasonably held, but were intended to convince employees not to support the union.

Employer Unfair Labour Practices

- Examples of prohibited communications:
 - *Emerald Foods Ltd.*, [2001] M.L.B.D. No. 8, quashed at Judicial Review, then upheld by the Court of Appeal (2003 MBCA 83)
 - Employer hand delivered letter to most employees eligible to vote on the day before certification vote
 - The employer argued the letter merely provided information
 - The Court of Appeal said “however benign one might perceive the contents of his letter, the Board concluded that it was delivered with the purpose of influencing the outcome of the vote.”
 - The letter referred to wage negotiations, and there was “an implicit warning that improved wages and benefits might be imperiled should the union be certified.

Discipline, Discharge, Other Prohibited Conduct

- s.7 prohibits discrimination in employment treatment due to involvement in organizing
- s.9 creates an unfair labour practice where an employer discharges or refuses to continue to employ, or refuses to re-employ, or lays off, or transfers, or suspends, or alters the status of, an employee who is a member of the union or who has applied for membership in the union
 - sections 7 and 9: reverse onus on the employer, who has to prove that the decision was not motivated by anti-union animus
 - If anti-union animus is a factor, there could be an unfair labour practice (even if there is some legitimacy to the employer's conduct)
- s.19 also prohibits the employer from changing working conditions to compel a person to not join a Union

Discipline, Discharge, Other Prohibited Conduct

J.C. Foods Ltd., [2001] M.L.B.D. No. 13

- layoffs were not for legitimate business reasons, and were meant to interfere with organizing.
- the manner of the layoffs – pulling employees off the production line mid-shift, escorting them out of the building, etc. – was not consistent with layoffs for economic reasons.

Canadian Anglo Machine and Ironwork Inc, [2000] M.L.B.D. No. 9

Combination of communication and suspicious layoffs and terminations led to a finding of unfair labour practice. The Board: “... prepared to infer that union activity in the plant was a factor in the Employer’s decision to lay off and terminate employees.”

“Statutory Freeze” following Application for Cert

No change in working conditions

Restriction on change of conditions on application for certification

10(1) Where an application has been made to the board for certification of a bargaining agent for a unit of employees for an employer, if, before the application is granted, dismissed or withdrawn, the employer, without the consent of the board, and not in accordance with a collective agreement affecting those employees and in force and effect at the time, decreases or increases the rate of wages of any employee in the unit or alters any other term or condition of employment in effect at the time of the application, the employer commits an unfair labour practice.

- Changes that were planned before the certification application are not a violation of the statutory freeze provision (“business as usual”)

Remedies for Unfair Labour Practices

- Potential Remedies: s.31(4):
 - a) Reinstatement
 - b) Employment of a person denied a position
 - c) Order a Union to reinstate a member who was expelled
 - d) Order compensation for lost employment benefits
 - e) Where a person has not lost income, order payment of \$2,000 to the person
 - f) Payment of \$2,000 to the Union
 - g) Cease and desist the conduct
 - h) Order a party to “rectify” any situation resulting from the unfair labour practice
 - i) Order a party to do, or refrain from doing, anything that is equitable to be done or refrained from in order to remedy any consequence of the unfair labour practice
 - j) Do two or more of the things set out in clauses (a) to (i).
- Note: interim remedies possible: s. 31(2)

Discretionary Certification

Discretionary certification for unfair labour practice

41 Where a union applies for certification as the bargaining agent for employees in a unit which the board determines is appropriate for collective bargaining and

(a) the board is satisfied that the employer, or any person acting on behalf of the employer, has committed an unfair labour practice as a result of which the true wishes of the employees are not likely to be ascertained; and

(b) the union has evidence of membership support adequate, in the opinion of the board, for purposes of collective bargaining;

the board may, notwithstanding section 40, certify the union as the bargaining agent for the employees in the unit.

Concluding Thoughts

- Organizing campaigns are about building presence in the workplace and relationship with employees.
- Under the *Rules of Procedure*, there is a 6 month bar to re-application. One failed attempt to unionize does not mean that group is lost forever
- And, unfair labour practices can occur after an organizing campaign as well – so maintain contacts and presence. Consider another attempt.

Questions?



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