

February 12, 2003

SUBMISSION

to the

BRITISH COLUMBIA LABOUR RELATIONS BOARD SECTION 3 COMMITTEE

Issue #1: **Definition of Employee** – Should all members of a “management team” be excluded from Code’s definition of employee?

We support the consultation-input. Hire or fire should not be a consideration. They are all management. Clear exclusions should be put in the Code.

Issue #2: **Definition of Picketing** – How should the Code distinguish between leafleting and illegal picketing?

While the code must distinguish between picketing and leafleting, we do not want to see any infringements in the ability to conduct either one. No reasonable trade unionist believes that leafleting affords the same effect as a picket line.

Issue #3: **Unfair Labour Practices (Part 2)** – Is the difference in rights that apply in a certification and rights that apply in a decertification appropriate?

What does balance mean? Certainly it is in the eye of the beholder. In certifications employers hold the shop floor and while the Code insists that employers must not threaten or impede the strivings of their employees to seek unionism, it is a section largely overlooked by the employers. Especially in smaller would be new certifications.

In our experience over the past several years, firings have very much been part of the fallout from most of our non-union attempts at certification. Threats of plant or unit closure are very common as well, intimidation is rampant and brow-beating is a fact of life. If anything, the restrictions in the present Code relative to employer conduct should be fleshed out so as to have teeth.

In a decertification bid certainly the scale is already well tipped towards the employer, unless the employer so agrees the union has no access to the work site. Sure we can call meetings but the decertification ringleaders don't attend and we stalk them so we have no ability to put our case forth.

In the raid arena, I would like to see a more wholesome approach. Whether that word fits in the general union language dictionary may be an issue. However, raids are in my opinion triggered by flaws in the incumbent union. Most times the charge is collusion between the company and union rendering union representation pointless and useless.

The many unionists we have seen in our years of existence that want to leave their present union do so from necessity, it's a self-preservation tactic. In our opinion once the cards are in, the vote should be held post haste and counted. Winner takes all. Long drawn out appeals and counter appeals are damaging to the workers, thus the employer as well.

The appeals are generally baseless things, bottom of the barrel scrapings by suddenly awake lackluster union representatives who are the cause of the employee shift in the first place. We believe that the applications should be scrutinized by the Board as soon as it is received.

Issue #4: Duty of Fair Representation Complaints (Sections 12 and 13) –
Can the Section 12 adjudication process be expedited?

Generally in our experience we find ourselves on side with the consultation input. Most complaints come from disjointed members who only see their side of things.

If the Board sees a concerted effort from a significant number of employees / members then perhaps a Vice-Chair may be the remedy.

Issue #5: Changes in Union Representation (Section 19) – Should current raid periods as set out in Section 19 of the Code be changed?

The ability to choose representation is certainly engrained in a democracy such as Canada. The opportunity to choose varies with the elected forum i.e., Canada-wide at least every 5 years, province-wide every 4 years, municipal every 2 years. Seemingly the more hands on, closer to home, the forum is the more often change can be effected.

I believe the present 7th and 8th-month rule is satisfactory. The present contracts are very long term some of the 8 and 9 year variety, refusing Canadians an opportunity to invoke change for that long a time frame flies in the face of democracy.

As to disruption as stated above please have the Section 3 Committee look into how many times the charges laid after a raid has occurred are bogus.

Issue #6: **Revocation of Bargaining Rights (Section 33)** – Should the Code explicitly provide for partial decertification of a bargaining unit?

We are opposed to partial decertification.

Issue #7: **Revocation of Bargaining Rights (Section 33)** – Should a union's certification be revoked after a lengthy closure?

In our opinion, decertification is the property of those who certified in the first place. If a union charter has been granted for a particular unit then the charter stays until the employees no longer wish to avail themselves of it. A new business with new employees may well be a different thing. It may be more disruptive if the union had to recertify as more than one union may be vying for the unit.

Issue #8: **Applications for Certification (Section 33(10))** – Where employees of a bargaining unit vote to decertify, should all unions, including the union that was decertified, have to wait for the same period of time before applying for a new certification?

We are okay with the consultation input. Ten months seems reasonable.

Issue #9: **Successor Rights and Obligations (Section 35)** – Should a bankruptcy result in a union being decertified?

In our opinion especially in the larger work units automatic decertification upon bankruptcy declaration is dead wrong. While cancellation of the existing collective agreement may be a reality, the certification must stay. Again this must be left to the will of the people who chose the union path in the first place. Furthermore, a union in place with its understanding of the workplace will facilitate any transition that may occur. Here too, an employer may find itself having several unions trying to certify a unit when it may not be favourable.

Issue #10: **Successor Rights and Obligations (Section 35)** – Should some form of successorship apply when contracting out?

We concur with the consultation input. If the Code protected employees as suggested, that would be a step in the right direction.

Issue #11: **Mergers of Union Locals (Section 37 and 150)** – Should the Code govern the relationship between a local union and the national or international union that it is chartered under?

There is much at issue here. There are fundamental principles that bind a union together. These principles are manifested in the Constitution of that particular union. Belonging to the group such as it is carries with it a set of responsibilities and duties along with the privileges of belonging. National unions cannot exist if they are made subject to internal pressures that erupt from time to time and are best left to the internal machinations to sooth. Imagine a BC Labour Code that

sets aside the 7th and 8th month rule and the 50% plus one signed card rule and opens the door to mergers 12 months of the year where any given group, at any given union meeting, can vote to leave their National union and merge with someone else. Just up the page in Issue #5 the input committee is recommending raids in the last year of the contract only, Issue #11 wants wide open windows with all kinds of local union freedoms.

Yes we believe that the Code should oversee mergers, however they have to be in keeping with reasonability. National unions do exist and do function and do provide a service to their members and to the communities where their members exist to say nothing of the social and people friendly things unions do.

National Union Constitutions must be sacrosanct; they after all contain the terms and conditions under which a local union joined in the first place. The Board offers locals the 7th and 8th month option to seek other affiliation. The Board also establishes a series of rules that must be followed in order to effect this change. The wheel is okay.

Issue #12: First Collective Agreements (Section 55) – Should the right to strike / lockout for a first collective agreement be eliminated?

The current system has the power needed to handle this issue. We oppose any notion of infringement on the right to strike in this or any other bona fide position.

Issue #13: Last Offer Votes (Section 78) – Does the ability to request a “Last Offer Vote” assist bargaining?

While I continue to agree in the process of collective bargaining in all its definitions, there may in fact come a time when a last offer vote is of some benefit providing that the outcome of the vote determines the direction of the future. If the membership rejects, it's back to the table. We believe in our membership and their ability to make clear decisions and accurate decisions. Often leaders need to come back to earth and see the real world.

Issue #14: Expedited Arbitration (Section 104) – Should parties to a collective agreement be able to contract out of Section 104?

We really have no stance on this as expedited arbitrations are mostly fictional to begin with.

**Submitted on behalf of the
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