Talking Union is a bi-monthly newsletter highlighting matters of interest to the labour relations community. We welcome your questions and comments.

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LABOUR RELATIONS AMENDMENT ACT (CONSTRUCTION INDUSTRY), 2000

Minister of Labour Chris Stockwell tabled the Labour Relations Amendment Act (Construction Industry), 2000 ("Bill 69") in the legislature on April 25, 2000, and the Bill has now received second reading. Bill 69 has five major parts, amending the Labour Relations Act, 1995. It affects only collective agreements in the construction industry summarized as:

- Changes to ss. 1(4) (single employer) and s. 69 (successor employer): Bill 69 proposes 2 changes: first, the Board is required to disregard family relationships. Secondly, in cases involving "key persons", the Board is required to consider certain specific factors;

- Changes to the residential sector of the construction industry: Bill 69 will limit strikes and lock-outs in the residential sector of the construction industry in the Greater Toronto Area for the 2001 round of bargaining;

- Agreements to abandon bargaining rights: Bill 69 allows an employee bargaining agency to agree with an employer to abandon bargaining rights in the construction industry;

- Local modification of provincial agreements in ICI sector: An employer bargaining agency or a "designated regional employers' organization" may apply to an affiliated bargaining agent to amend certain provisions in provincial agreements and, failing agreement, to apply to an arbitrator for final offer selection;

- Changes to mobility rights and name-hires: Certain "default provisions" for hiring are deemed to be included in provincial agreements in the ICI sector allowing an employer to transfer up to 40% of the total number of required employees to a project located in a distant geographic area and, in addition, to name hire up to 60% of its workforce from the local union in the area where the project is located.

The Minister of Labour is required to conduct a review of the effectiveness of the provisions of the Bill by no later than December 31, 2001.

I. Changes to ss. 1(4)/69 (s. 126)

With respect to both related employer applications and applications resulting from a sale of a business, **Bill 69** proposes amendments to s. 126 which will require the Board to:

> (i) disregard "any relationship by way of blood, marriage or adoption" between an individual having a direct or indirect involvement with one of the entities and an individual involved with any other entity;
>
> (ii) consider 3 factors if the applicant alleges in the application that a person is a "key individual" who was not simultaneously involved with the entities in question:
>
> - the length of any hiatus between the activities of the key individual with the entities in question;
> - whether the key individual occupied a "formal management role" in the first entity; and,
> - whether the first entity was able to carry on business "without substantial disruption or loss when he or she ceased to be involved" with that entity.

The directive to the Board to disregard family relationships is clearly a change in the law which will have a negative effect on the likelihood of success in certain fact situations. In the past, a pre-existing family relationship has raised a rebuttable inference that the transaction may be artificial. On the other hand, the Board already takes into account the other listed factors when making its "key person" determinations; the concern now will be how the Board will interpret the section. Will it read into **Bill 69** a suggestion by legislators that these factors must be given greater weight than the Board has given them in the past or that they override other relevant evidence?

II. Residential Sector (ss. 150.1 and .2)

Under the **Bill 69** proposals, collective agreements applicable to the residential sector in the City of Toronto and the Regional Municipalities of Halton, Peel and York are deemed to expire on April 30, 2001 and triennially thereafter. There will only be a limited "window" (May 1, 2001 to June 15, 2001) in which to conduct a strike or lock-out. Once the window closes, if no agreement has been reached, either party may request interest arbitration. **Bill 69** sets out the procedures and rules for such an arbitration and gives extensive powers to the Lieutenant Governor in Council to make regulations.

The proposed legislation clarifies that it is not to be interpreted to affect the validity of a relevant collective agreement which also covers non-residential work and/or work in additional geographic areas not covered by the Bill. Finally, these new residential provisions are automatically repealed on April 30, 2002.

III. Agreement to abandon bargaining rights (s. 160.1)

Bill 69 enables an employee bargaining agency to agree with an employer to abandon the bargaining rights held by it and its affiliated bargaining agents to represent that employer's employees in any part(s) or all of Ontario. The Bill does not require an EBA to do so. If the
EBA abandons bargaining rights, **Bill 69** immunizes the EBA from proceedings against it under Bill 80 or for alleged breach of the duty of fair representation under the Act.

IV. Re-opening provincial agreements (ss. 163.2 - .4)

The Bill permits an employer bargaining agency or a "designated regional employers' organization" to seek certain amendments to a provincial agreement from a Local Union for a particular kind of work in a particular market in the Local's geographic jurisdiction. The permitted amendments can be to:

> (i) wages, including overtime pay and shift differentials and benefits;
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> (ii) restrictions on the hiring of employees who are members of another affiliated bargaining agent that is in the same employee bargaining agency as that in which the affiliated bargaining agent is a member but who are not members of the EBA;
>
> (iii) restrictions on an employer's ability to select employees who are members of the affiliated bargaining agent;
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> (iv) accommodation and travel allowances;
>
> (v) the ratio of apprentices to journeymen employed by an employer.

The Bill anticipates that, if the parties agree, the amendments must be approved by the provincial bargaining agencies. However, if the parties cannot agree, the employer bargaining agency or DREO may request arbitration within 14 days after the day on which the application was served on the affiliated bargaining agent. Arbitration is by final offer selection.

Bill 69 creates, for the first time, a designated regional employers' organization ("DREO"), an organization whose employer members carry on business in an area covered by the affiliated bargaining agent's geographic jurisdiction. (See, ss.151(1) for the definition of a

DREO and s.125(1.0.1) for the Lieutenant Governor's power to designate DREO's.)

After initial attempts to amend the provincial agreement voluntarily have failed, the Bill permits an affected DREO or an employer bargaining agency to apply for final offer selection by an arbitrator. The DREO (or several of them), the employer bargaining agency, the employee bargaining agency, and the affected affiliated bargaining agent may file final offers. The test at FOS arbitration is whether the provisions of the provincial agreement render the employers who are bound by it at a "competitive disadvantage" with respect to the kind of work, the market and the location indicated in the application. The trade union may oppose the application, as well as submit its own final offer. The proposed s. 163.3 contains extensive provisions governing the referral to arbitration, including the requirement that an arbitrator release a decision, without reasons, within 12 days of the appointment. Section 163.2 bars new applications for local modifications to a provincial agreement for specified time periods.

V. Default provisions re hiring (s. 163.5)

Under **Bill 69**, every provincial agreement is deemed to include certain mobility and name-hiring provisions in the ICI sector of the construction industry, namely:

> (i) an employer may transfer up to 40% of its required employees from its own workforce to a project located outside its home area so long as these individuals are members of an affiliated bargaining agent of the same employee bargaining agency as the ABA where the work will be performed, assuming the provincial agreement has a union security provision;
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> (ii) the employer may name hire up to 60% of its required employees (not employed under the above mobility provisions) who are members of the ABA in the geographic area where the work is performed without regard to the referral provisions of the provincial agreement;
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> (iii) the employer and employee bargaining agencies may contract out of these new mobility and name-hiring provisions or may negotiate variations of them, but there is a restriction on taking such negotiations to impasse because of a failure to reach an agreement on them.

VI. Concluding Comment

Bill 69 proposes extensive amendments to the Act and should be reviewed for its full details. It gives substantial control to employers to force local modifications in province-wide agreements, makes substantial intrusions into union hiring hall provisions, and imposes new limits and interest arbitration in the residential sector. **Bill 69** is scheduled to go for hearings before the Standing Committee on

Justice and Social Policy during the week of May 15, 2000.