



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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PROPOSED AMENDMENTS TO THE LRA, 1995 - BILL 139

On November 2nd, 2000, the Ontario Government tabled Bill 139, the Labour Relations Amendment Act ("Bill 139"), which proposes several changes to the Labour Relations Act, 1995 (the "Act"). If enacted, the majority of amendments will have a significant impact on trade unions and the acquisition and maintenance of their collective bargaining rights.

The proposed amendments can be divided into the following categories:

- i. AMENDMENTS WITH RESPECT TO CERTIFICATION AND DECERTIFICATION APPLICATIONS
- ii. AMENDMENTS AFFECTING FIRST CONTRACT SITUATIONS
- iii. DISCLOSURE OF SALARIES AND BENEFITS OF UNION OFFICIALS OF \$100,000 AND OVER
- iv. NON-CONSTRUCTION EMPLOYER TERMINATION APPLICATIONS
- v. PROJECT AGREEMENTS
- vi. OTHER AMENDMENTS WITH RESPECT TO PROCEEDINGS AT THE BOARD.

These amendments, when passed, will seriously and negatively impact on the ability of trade unions to organize employees, will facilitate the filing of termination applications by employees, and will make other changes. The proposals are detailed in TALKING UNION - SPECIAL EDITION, NOVEMBER 2000.

BOARD DECIDES NOT TO INQUIRE INTO STATUS UNDER THE TQA

In a recent decision of the Board, 1206468 Ontario Ltd. c.o.b. as Quadracon (Board File No. 2560-99-R, released October 31, 2000), the Board reversed some twenty years of jurisprudence on the issue of whether it will take the Trades Qualification and Apprenticeship Act (the "TQA") into account when determining who is in the bargaining unit in a certification application involving a compulsory certified trade in the construction industry. It has now decided not to consider status under the TQA.

The TQA provides that an individual working in the compulsory certified trades (namely plumbers, electricians, sheet metal workers, boilermakers and operating engineers) must be a licensed journeyman or a registered apprentice under the TQA, or make an application for apprenticeship within 90 days of beginning to perform the work of the trade, in order to be lawfully working in the trade.

Since the 1981 decision of Irvcon Roofing & Sheet Metal (Pembroke) Ltd. [1981] OLRB Nov. 1594, the Board has consistently held that employees who are not "lawfully" in the bargaining unit because they are neither a licensed journeyman nor a registered apprentice under the TQA should not be included in the bargaining unit for the purpose of the "count" in certification applications. The theory in those cases was that unlicensed tradesmen do not share a "community of interest" with their licensed co-workers, although performing similar work for the same employer.

This reasoning has been questioned by various Vice-Chairs in obiter in a few cases over the years (most recently in the July, 2000 decision of Neivex Masonry Inc., Board File No. 0715-97-R), which led the Board to revisit the matter in Quadracon.

In a 30-page decision issued by Chair MacDowell, the Board reasoned that not only is the "community of interest" not the test for craft bargaining units under the Labour Relations Act but that, in fact, unlicensed tradesmen do have common interests for collective bargaining purposes with their licensed co-workers, regardless of their compliance with licensing regulations. Therefore, the Board found that it was wrong in principle and wrong in practice to focus so rigidly and exclusively on the TQA and that it is the work setting that should be focussed on.

As such, Chair MacDowell concluded that the "status" of an individual, actively at work on the date of the application for certification, should be determined with reference to the work that s/he is doing on that date, whether or not that work is being performed "lawfully" in some sense, and whether or not the individual has the required "papers".

As a practical matter, the effect of Quadracon is that the compulsory certified trades can no longer rely on the TQA to exclude individuals from the bargaining unit. Organizers will need to organize everyone performing the trade's work, licensed or not. Further, from a broader perspective, Quadracon is a negative decision for the trades affected, in that it minimizes the importance and necessity of proper training and certification under the TQA.

STATUS OF BILL 69

The government filed a motion on November 1, 2000 to send Bill 69 back to the Standing Committee prior to presenting it for third reading. In its news release, the government stated that its intention is to propose an amendment to Bill 69 to "...remove general contractors outside of the broader Toronto area from working agreements they signed decades ago with the building trades

unions..."

Contributors for November 2000

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Do you want your issues of TALKING UNION by e-mail? Do you have an issue you would like discussed in TALKING UNION? Do you have additions or corrections to our mailing list? If so, please contact the editors:

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