

“Workplace stability” goal of amendments to *Labour Relations Act*

On November 3, 2004, the Ontario government introduced Bill 144, the *Labour Relations Statute Law Amendment Act, 2004*. Citing the need to "promote workplace stability" and "restore fairness and balance to labour relations", the government has signalled its intention to roll back some of the more controversial provisions of the *Labour Relations Act, 1995*, enacted by the previous Conservative government (see "[New amendments to Labour Relations Act passed](#)"). The following is a brief overview of some of the key provisions of the new bill.

UNION DECERTIFICATION POSTERS, SALARY DISCLOSURE

Two of the most controversial provisions in the current Act are the requirements that unionized businesses post information about procedures for decertifying the union and that unions disclose the names of all union officers, directors and employees who earn salaries and benefits of \$100,000 or more a year. The bill would repeal these provisions. The government has stated that they are one-sided and provocative because no equivalent obligations are placed on employers.

OLRB CERTIFICATION REMEDY FOR EMPLOYER UNFAIR LABOUR PRACTICE RESTORED

The bill contains provisions restoring the authority of the Ontario Labour Relations Board to order the automatic certification of a union. This power was removed from the Board by the Conservative government following a Board certification order in respect of a Wal-Mart store (see "[Subtle but effective threat to close store leads to certification of Wal-Mart outlet](#)"). Under the bill, the Board could order a representation vote, a second representation vote, or automatic certification if it determined that, because of an employer's contravention, the employees' true wishes were not reflected in a representation vote or the union was unable to demonstrate that at least 40 per cent of the proposed bargaining unit were members of the union at the time the certification application was filed. The automatic certification remedy could be granted if the Board determined that no other remedy would be sufficient to counter the employer's contravention.

UNION UNFAIR LABOUR PRACTICE

The bill includes a parallel provision that deals with remedies for unfair labour practices by unions. Currently, the Board may order a second representation vote if it determines that a union has contravened the Act and that the contravention has resulted in the outcome of the earlier vote likely not reflecting the true wishes of employees. Under the bill, the Board would also have the power to dismiss the union's application if no other remedy were sufficient to counter the contravention.

INTERIM ORDERS FOR VIOLATIONS DURING ORGANIZING CAMPAIGNS

The bill would restore the Board's powers to make interim orders reinstating employees and interim orders concerning employees who have been disciplined. The Board could make such orders only if the employer's actions had occurred during a union campaign to establish bargaining rights. The government has indicated that this power is necessary to counter the negative effects that disciplinary reprisals can have on organizing drives. An applicant for interim relief would have to demonstrate that

- the employer's action occurred during an organizing campaign;
- there was a serious issue to be decided in a pending proceeding;
- the interim order was necessary to prevent irreparable harm or to achieve other significant labour relations objectives; and
- the balance of harm test favoured making the order pending a final decision on the merits in the proceeding.

Moreover, the Board could not grant an interim order if it determined that the reprisal was not related to the employee's exercise of his or her rights under the Act.

CARD-BASED CERTIFICATION IN CONSTRUCTION INDUSTRY

The bill would restore, for the construction industry only, the option of a card-based system of certification. The government has indicated that, given the emphasis on project work and the mobile nature of the work force in the construction sector, re-introduction of the card system would promote fairness and balance in the system. Under this system, if a union signed up 55 per cent or more of the employees in the proposed bargaining unit, no representation vote would have to be held. A representation vote would be held only if the union signed up 40 per cent or more of the employees, but less than 55 per cent. The application would be dismissed if the union failed to obtain 40 per cent support.

TORONTO AREA RESIDENTIAL CONSTRUCTION SECTOR

The bill would make the special bargaining and dispute resolution regime introduced in 1998 for the residential construction industry in Toronto and the surrounding area permanent (see "[Bill 69 - Labour Relations Amendment Act \(Construction Industry\), 2000](#)"). That regime was introduced in response to a series of strikes that paralyzed the residential construction industry in 1998 and imposed common expiry dates and three-year cycles for collective agreements in that sector.

Under the bill, collective agreements in the sector would be deemed to expire on April 30, 2007, and at the end of every third year after that date. Notice to bargain could be given on or after January 1 of the year in which the agreement expired, and the right to strike or lock out would be restricted to the period between April 30 and June 15 of the year of expiry. Either party could apply to have the issues in dispute settled by an arbitrator on the later of the day on which the parties would have been in a legal strike or lock out position – if not for the restrictions on strike and lock out activity imposed by this regime – and June 15. The parties may jointly appoint an arbitrator or request that the Minister of Labour appoint one. For further information, please contact [Andrew Tremayne](#) at (613) 940-2736.

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