

Ontario "Wal-Mart" Bill now law

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On June 29, 1998, Bill 31, the *Economic Development and Workplace Democracy Act*, became law.

CERTIFICATION REMEDY FOR MISCONDUCT DURING REPRESENTATION VOTE

The Bill is best known for its repeal of the Ontario Labour Relations Board's power to certify a union despite a vote against union representation. Readers of *FOCUS* will recall that the Board used this power to certify the union at the Windsor Wal-Mart when it ruled that the employer had intimidated workers during the campaign leading up to the vote (see "[Subtle but effective threat" to close store leads to certification of Wal-Mart outlet](#)" on our Publications page). Section 11, the provision in question, provided that the Board could certify the union if it was of the view that employer misconduct was such that the true wishes of employees would not be reflected in a representation vote.

Now, the Board's remedial power in the case of employer or union misconduct will be restricted to ordering a new representation vote. As well, it will have the power to "do anything to ensure that a new representation vote ordered under this section reflects the true wishes of the employees in the bargaining unit". The removal of the Board's powers applies retroactively to any application made to it before the amendments came into force.

CERTIFICATION VOTE THRESHOLDS

Under the *Labour Relations Act*, a union seeking certification must show it has the support of at least 40 per cent of the employees in the bargaining unit. Now, a new provision, s. 8.1 provides a process for employers to disagree with the union's estimate of the number of employees in the bargaining unit. Representation votes would still be held within five days of the certification application, and ballots would be sealed while Board rules on the employer's objection.

For more information on this subject, please contact [Andrew Tremayne](#) at (613) 563-7660, Extension 236.