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# The Unionized Workplace:

Negotiating and Administering Collective Agreements



Presented by

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# Stephen Beernaert

- Member of the Manitoba Bar since 2014 and Alberta Bar since 2009
- Previously worked with Bennett Jones LLP, where he had a labour relations practice
- Experience with certification applications, organizing drives, labour board references, grievance arbitrations, and court proceedings related thereto



# Topics discussed today

- Overview of the Labour Relations Act
- Employer rights and responsibilities during a union organizing campaign
- Employer rights and responsibilities during collective bargaining
- Negotiating and administering a collective agreement

# Overview of the Labour Relations Act

## Quid pro quo

- Every employee has the right to join a union and participate in its lawful activities
- If a majority of employees support a union, the union has the exclusive right to represent employees in bargaining and in resolving workplace disputes
- Employees gain the strength that comes from bargaining as a single voice
- In return, the employer gains the industrial stability of dealing with one entity, immunity from lawsuits by individual employees, and protection from strikes while a collective agreement is in force
- Employers also have the right to bargain through an employer's organization if they wish to do so

# Acquisition of bargaining rights

- Unions gain bargaining rights through certification or voluntary recognition
- Certification occurs when the union applies to the Labour Relations Board to be recognized as exclusive bargaining agent for a given unit of employees
- Voluntary recognition occurs when an employer enters a collective agreement with a union for a given unit of employees

# Certification

- Union files an application with the Board to become recognized as exclusive bargaining agent for a given unit of employees
- Must include evidence of employee support within the unit (typically union membership cards)
- Union is prohibited from soliciting membership cards during working hours
- Employer may bar non-employee union organizers from site unless employees are housed on the site
- Employers are prohibited from pressuring employees not to sign union cards or offering inducements

## Certification (cont'd)

- Board Officer reviews the application and considers:
  - Whether the applicant is a union
  - Whether the application is timely
  - Whether the unit applied for is appropriate for collective bargaining
  - Whether there is evidence of adequate employee support
  - Whether employee support appears to have been voluntarily given
  - Whether the union is dominated by the employer

## Certification (cont'd)

- The union, the employer and employees will be given notice of the application and allowed to make submissions to Officer
- Employer is able to make submissions as to the appropriateness of the bargaining unit, but not employee support
- Employees can give evidence as to fraud, duress, undue influence by the union, but the employer cannot assist them in doing so



## Certification (cont'd)

- After the Officer makes his report, it will go to the Board who will call a hearing
- If the union has less than 40% support, the application will fail without a vote
- If the union has more than 65% support, the application will pass without a vote
- If the union has 40% to 65% support, the Board will order a vote
- Board can grant interim certification where the only issue is the bargaining unit description and the union has adequate support in any event

## Certification (cont'd)

- Board may make an order for certification without adequate support where employer has committed an unfair labour practice
- This will only apply if the employer's misconduct has made it unlikely that the Board will be able to determine the true wishes of employees and the union has adequate support for collective bargaining

# Decertification

- The decertification process is very similar to the certification process
- This also applies to “raids” (i.e where one union attempts to replace another as bargaining agent)
- Employer must not be involved in either process

# Voluntary Recognition

- An employer may voluntarily recognize a union by entering a collective agreement with that union respecting a given unit of employees
- Union does not have any rights until first collective agreement is signed and more limited rights thereafter
- Collective agreement voluntarily entered with an employer dominated union is not valid

# Collective Bargaining

- Once a union is certified, an employer must meet with the union to negotiate a collective agreement
- Employer is required to provide information and access
- A voluntarily recognized union can only force an employer to negotiate near the end of an existing collective agreement
- Negotiations are commenced by either side serving notice to bargain on the other party
- A certified union is protected from decertification for one year

## Collective Bargaining (cont'd)

- Once notice to bargain has been served, both parties have a duty to negotiate in good faith and make all reasonable efforts to enter a collective agreement
- “Surface bargaining” is an unfair labour practice – Can result in the Board setting the terms of a collective agreement
- “Statutory freeze” – Neither party can unilaterally alter the terms and conditions of employment once a certification application has been filed or 90 days thereafter
- Statutory freeze also applies for 12 months after termination of collective agreement unless a strike or lockout occurs

# Strikes and Lockouts

- If collective bargaining is unsuccessful, parties can apply to strike or lockout
- Cannot apply for 90 days after certification
- Union must hold a strike vote before any strike
- Board may refuse to allow a strike or lockout where the parties have failed to bargain in good faith
- Fines for employers, unions and employees for each day of illegal strike or lockout

# Settlement of Collective Agreements

- Either parties may apply to the Board for the appointment of a mediator or a conciliation board during collective bargaining
- Mandatory first agreement arbitration
- Mandatory arbitration or conciliation is available for subsequent agreements, but not normally ordered unless one of the parties has failed to bargain in good faith



# Ratification Vote

- Union is required to hold a ratification vote on each collective agreement
- Agreement comes into force once a majority of employees vote for it
- Failure to conduct ratification vote does not invalidate any proceedings under a collective agreement by that fact alone

# Unfair Labour Practices

- Generally speaking, unfair labour practices are actions which undermine or frustrate the purpose of the Code (i.e. respecting employee choice and fostering harmonious labour relations)

## Unfair Labour Practices (cont'd)

- Employer unfair labour practices include:
  - Interfering with the formation of a union
  - Intimidating, disciplining or dismissing employees for being involved with a union
  - Offering incentives to employees not to join a union
  - Refusing to hire someone who has been involved with a union
  - Spying on or inquiring about union activity
  - Contributing financial or other support to a union
  - Violating the statutory freeze or threatening an illegal lock out

## Unfair Labour Practices (cont'd)

### Employer unfair labour practices (cont'd):

- Hiring or threatening to permanently replace striking workers with replacement employees
- Cancelling or threatening to cancel employment benefits or pension entitlements during a strike
- Negotiating with a union where another has bargaining rights
- Electioneering on the day of a representation vote
- Failing to provide information
- Failing to bargain in good faith and use all reasonable efforts to enter a collective agreement

## Unfair Labour Practices (cont'd)

### Union unfair labour practices:

- Discriminating against individual members
- Failing to represent individual members fairly, in good faith and with reasonable care
- Intimidating or coercing employees into becoming union members
- Negotiating with an employer respecting employees represented by a different union
- Threatening an illegal strike
- Failing to negotiate in good faith

## Unfair Labour Practices (cont'd)

### Remedies:

- Reinstatement with back pay (reverse onus)
- Order to hire employee not hired due to union activity
- Punitive damages not exceeding \$2000
- Remedial orders
  - Allowing for union access
  - Requiring publication of specified materials by employer
- Automatic certification without a vote
- Settlement of collective agreement by arbitration or conciliation

# Collective Agreements

- All collective agreements are kept on file by Board and are available to the public on request
- Examples:
  - RM of Glenwood
  - City of Dauphin
  - City of Thompson
  - RM of Whitehead

# Required Provisions

- No strikes or lock outs
- Obligation to act fairly, in good faith, and in a manner consistent with the agreement
- Must be for a term of at least one year
- Mandatory check off
- Mandatory arbitration for the settlement of disputes related to employment
- Must contain a just cause provision (does not apply to probationary employees)
- Must contain a consultation provision on request by union



# Sample Collective Agreements

- RM of Morris CBA
- RM of Killarney-Turtle Mountain CBA

# Questions?

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