



IUPAT DISTRICT COUNCIL 38

LABOUR CODE ORGANIZING REQUIREMENTS

Employee's rights

As is said in section 4 of the *Labour Relations Code*, every employee has the right to join a union. Section 5 of the *Labour Relations Code* states that an employee cannot be disciplined or dismissed for joining a union.

Certification Process

The first step in the certification process is to obtain valid signed memberships or up-to-date dues payments from the employees in the proposed bargaining unit. Membership application information is confidential to the union and the Labour Relations Board.

The Board has interpreted the *Labour Relations Regulation* to require the following minimum criteria for establishing membership in good standing:

- (a) a membership application must be signed by the individual personally and dated at the time of signature. Cards cannot be signed by "proxy" on behalf of an individual.
- (b) the name of the union on the membership card should show the local number, if applicable, and should be the same as the name and local number on the application.
- (c) a membership card must contain the following statement: *In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining.*
- (d) The membership card must have been signed within 6 months of the application for certification, or active membership must have been maintained by dues payments.
- (e) Cards will be accepted for the purposes of an application if they are signed and submitted to the Board before midnight on the day the application is filed. The day the application is received by the Board is counted as the final day in the 6 month period.
- (f) The card must be dated in such a way as to ensure that the Board is able to clearly determine when the card was signed and that it was dated at the time of signature. It is clearer to write the month rather than use numerical dating. If numerical dates are used, all cards submitted should use the same system of numerical dating. For example, "07/09" could be either July 9 or September 7.

Provincial Office:

7621 Kingsway, Burnaby, BC V3N 3C7

T: 604.524.8334 TOLL FREE: 1.800.266.1527

F: 604.524.8011 | W: dc38.ca

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(g) In the case of a transfer card from another local of the same union, the Board has held that if the transfer card certifies that the individual is a bona fide member of the issuing local, and it is signed by the member, it will meet the requirements of the Code, providing there is evidence of continued payment of dues to the local in British Columbia.

In addition to the above-noted requirements, a union making an application for certification in the construction industry on the basis of active membership must attach a signed expression of support from those members in the following form:

I support the application by (Name of trade union) for the certification applied for.

(Name of employee)

(Date)

This form must be signed and dated by the employee within six (6) months of the application for certification, and will apply to an application for certification for the employer whom the employee is working for on the date the form is signed.

Board decisions have established that the above-noted requirements for valid membership will be rigorously enforced. The statement on the membership card which is specified in the Regulation should not be modified in any way.

The 2022 amendments to the *Labour Relations Code* establish two thresholds related to membership cards that provide two options for achieving certification.

Option 1 - Union Membership Cards Only: If the union has signed union membership cards from at least 55% of the employees in the proposed bargaining unit, then assuming the proposed bargaining unit is appropriate, the Board will certify the union without a vote.

Option 2 – Secret Ballot Vote: If the union has signed union membership cards from at least 45%, but less than 55%, of employees in the proposed bargaining unit, then the Board must order a representation vote. The representation vote must be held within five business days of the Board receiving the application and is conducted by secret ballot. If a majority of the employees

in the proposed bargain unit vote in favour of the union, and the Board is satisfied that the proposed bargaining unit is appropriate, then the Board must certify the Union.

Once the Union has enough cards signed to meet one of the above thresholds (preferably 55%), the Union will make an application to the Labour Board for certification using the Labour Board's Form 18, which can be found on the Board's website under the heading "Application Forms".

While an application for certification is pending, an employer must continue normal business practices. This means that no unscheduled changes in rates of pay or other terms or conditions of employment can be made during this period without the Board's written permission.

Once the union has filed the application for certification with the Board, the Board may set a conference and/or a certification hearing date to address objections to the application. The issues to be addressed at the hearing typically fall into the following categories:

- (a) Is the applicant a trade union as defined in the *Labour Relations Code*?
- (b) Is the group of employees applied for an appropriate unit for collective bargaining?
- (c) Does the applicant trade union have the necessary membership support within the unit to have the secret ballot vote ordered and counted?
- (d) Inclusions and exclusions from the unit
- (e) Has an unfair labour practice occurred?

The majority of unfair labour practices that an employer may commit during a certification campaign are set out in Section 6 of the *Labour Relations Code*.

If there are no objections to the certification application, and the Union has at least 55% of employees to sign cards, the Board will certify the Union as the bargaining agent for the employees applied for. If there are objections, a hearing will be held, and, assuming none of the objections succeed, the Board will certify the Union as the bargaining agent for the employees at the conclusion of the hearing.

If the Union has not achieved the 55% threshold, but at least 45% of employees signed cards, a vote will be conducted within 5 days, regardless of whether a hearing is held. A majority of votes cast in favour of union representation will result in certification. The Board may seal the ballots and wait to count them until the outcome of the certification hearing. The amendments to the *Labour Relations Code* that came into effect in May of 2019 expand the circumstances in which the Board may grant "remedial certification" – or certification regardless of a vote where the employer has engaged in unfair labour practices.

Limits on what the Union can say to convince employees about the benefit of being a Union member

Sections 8 and 64 of the *Labour Relations Code* provide broad latitude as to what the Union can say to employees about their terms and conditions of employment.

Right to communicate

8 Nothing in this Code deprives a person of the freedom to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business.

Information

64 A trade union or other person may, at any time and in a manner that does not constitute picketing as defined in this Code, communicate information to a person, or publicly express sympathy or support for a person, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by that person.

Union communication cannot amount to “picketing”, which is defined in the *Labour Relations Code*:

"picket" or "picketing" means attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person's product, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose, but does not include lawful consumer leafleting that does not unduly restrict access to or egress from that place of business, operations or employment or prevent employees from working at or from that place of employment;

The Union cannot be “coercive or intimidating”. Section 9 of the *Labour Relations Code* provides:

Coercion and intimidation prohibited

9 A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

Basically, the Union's communication should be ok so long as it is not:

- (a) standing near the employer's place of business and telling employees not to go to work for that employer;
- (b) telling employees that it or another Union member are going to harm them if they don't join the Union;
- (c) offering bribes;
- (d) misrepresenting what the Union does for employees or making unrealistic promises; or,
- (e) telling employees they are going to lose their job if they don't join the Union.

Limits on action the Union can take to convince employees about the benefit of being a Union member

Section 7 of the *Labour Relations Code* restricts access to an employer's place of business during working hours for organizing activities:

Limitation on activities of trade unions

7 (1) Except with the employer's consent, a trade union or person acting on its behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.

(2) If employees reside on their employer's property or on property to which the employer or another person has the right to control access or entry, the employer or other person must on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union and, if the trade union acquires bargaining rights, after that to enter the property to conduct business of the trade union.

(3) If directed by the board and on request by the trade union representative, the employer must provide the representative with food and lodging at the current price and of a similar kind and quality as that provided to the employees.

This means the Union cannot enter an employer's premises without the employer's permission during business hours, however, the Union can stand outside the place of entrance to the site.

The Union cannot "picket" an employer unless it is legally on strike. Again, picketing is defined in the *Labour Relations Code*:

"picket" or "picketing" means attending at or near a person's place of business, operations or employment for the purpose of persuading or attempting to persuade anyone not to

- (a) enter that place of business, operations or employment,
- (b) deal in or handle that person's product, or
- (c) do business with that person,

and a similar act at such a place that has an equivalent purpose, but does not include lawful consumer leafleting that does not unduly restrict access to or egress from that place of business, operations or employment or prevent employees from working at or from that place of employment;

The Union is permitted to leaflet or disperse printed information about an employer to their employees. The Union can do this outside the entrance to the employer's shop, office or site, provided that it does not prevent or restrict the employees' access to and from that shop, office or site.

Liability

Section 66 of the *Labour Relations Code* protects the Union from liability for Union organizing activities, provided the Union remains outside entrances and exits to an employer's workplace.

Actions

66 No action or proceeding may be brought for

- (a) petty trespass to land to which a member of the public ordinarily has access,
- (b) interference with contractual relations, or
- (c) interference with the trade, business or employment of another person resulting in a reduction in trade or business, impairment of business opportunity or other economic loss

arising out of strikes, lockouts or picketing permitted under this Code or attempts to persuade employees to join a trade union made at or near but outside entrances and exits to an employer's workplace.

We are not aware of an organizer or officer being sued personally for organizing activities.