



Position on the Automatic Certification provision in the *Labour Relations Act*

Recent amendments to the *Labour Relations Act* in Newfoundland & Labrador provide for automatic certification of a union if the application for certification contains evidence that at least 65% of the workers have signed union membership cards. Prior to this amendment, all certification applications were subject to a mandatory secret ballot vote. Removing the secret ballot vote, conducted by a neutral third party, eliminates an employee's ability to freely and privately choose on union certification. This amendment significantly shifts the balance of our legislation in favour of organized labour, and will have a damaging impact on the labour relations climate in this province.

It is the unequivocal position of the NLEC that the Government of Newfoundland & Labrador rescind the provision for automatic certification of a union where the application is supported by at least 65% of the workers signing union membership cards, and reinstate mandatory secret ballot voting.

Removal of the right to a secret ballot vote on union certification is a step backwards in labour legislation. While in 1977 all jurisdictions had automatic certification provisions, mandatory secret ballot voting has become the preferred method for union certification with five jurisdictions repealing the legislation, including Newfoundland & Labrador in 1994. The rationale for repealing this legislation is that secret ballot voting ensures the democratic right of all workers in a non-unionized environment to choose for themselves, without fear of pressure or coercion from either union or employer, whether or not they would like to be represented by a union.

In consulting on changes to labour legislation in this province, the Government considers union leadership to represent the interests of employees. Within the private sector, however, union leadership only actually represents 19.85% of the workforce of this province (Statistics Canada, 2012). Union leadership supports automatic card based certification as it increases certification success, therefore increasing support for their organization. Those most impacted by this change in legislation however, the non-unionized worker, are NOT represented by organized labour.

Signing a union membership card does not always accurately represent an individual's desire to join a union or have a union certify in his or her workplace. There are a variety of factors that impact the signing of a union membership card, including peer pressure or the desire to avoid peer pressure, lack of information on consequences of signing the card, lack of information on union certification overall, intimidation, and misinformation. The secret ballot vote allowed employees a "sober second thought" and the ability to make a fully informed choice, as to whether or not they would like to be represented by a union. Automatic certification removes this democratic right.

Without certainty that union certification is truly the wish of the majority of the bargaining unit, it is impossible for the employer and the union to bargain in good faith (Boyer, 2009). This lack of faith in the process results in claims of intimidation and coercion, and can damage the labour relations climate of the workplace, starting the union/employer relationship off on the wrong foot. Uncertainty in the labour relations climate is bad for business, and will damage the business investment climate in this province.

Until this provision is rescinded, regulatory changes must be made to protect against the dangers of automatic card based certification. The NLEC has identified six recommended regulatory changes that, in combination, will help mitigate the dangers of this legislation and improve the chances that the true will of the employee is captured when signing a union membership card.

Recommended safeguards:

1a: Implement regulations requiring that the union inform the Labour Relations Board and the employer upon the signing of the first card of a union certification attempt.

1b: Implement regulations requiring the employer to publicly post a notice in the workplace that a union organizing drive is underway.

2: Amend regulations decreasing the time frame that cards are valid from 90 days to 30 days.

3a: Implement regulations requiring standardized union membership cards.

3b: Implement regulations requiring that the union provide the employee with a copy of their constitution and bylaws prior to signing the card.

4: Implement regulations regarding the signing and dating of cards.

5: During the investigation of applications eligible for automatic certification, require the Labour Relations Board investigating officer to conduct random interviews of employees who have signed cards as a mechanism to verify they actually signed and dated the card, and that they clearly understood the implications of signing the card.

6: Implement regulations requiring that if certification applications contain ANY EVIDENCE that wishes for union representation were not expressed freely, were subject to union coercion or intimidation, or that membership cards were obtained through fraudulent activity or illegal organizing tactics, the board MUST order a secret ballot vote to determine the wishes of the employees in the unit or, based on severity, dismiss the application and deem the union unable to reapply for certification for a period of one year.