



Construction Employers Need to Be Aware of How Quickly They Can Become a Unionized Employer

April 2023 Employer Alert

For most industries in Canada, unionizing efforts are apparent to the employer and unionization only occurs after all relevant workers have had a chance to vote on whether they want to be unionized. For construction companies in Ontario, the unionization process can be vastly different.

In Ontario, a union can apply to be the certified bargaining agent in regards to a construction employer, based on signed union membership cards. The union is automatically certified if at least 55% of the workers on the application date have signed membership cards. It is important to stress that the test is based on the buy-in of the workers on the application date. It is not based on the buy-in of all workers. As an example, let's say that your construction company currently has 10 labourers, of which 6 are openly opposed to unions, 1 has no opinion on unions, and 3 have recently signed in secret a union membership card. On July 13th, it just so happens that, due to vacation scheduling, a family emergency, and the early wrap-up of a project, only 4 labourers are working and 3 of them are the ones who have secretly signed a union membership card. In that circumstance, all the union has to do is file a card-based certification application in regards to your labourers on July 13th and they will be automatically certified. It does not matter that the majority of your labourers do not want to be unionized. The test is whether the union has signed cards in regards to 55% of the workers on the application date. If the union does not have 55%, but at least 40% of the

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workers on the application date signed cards, then there is a vote. If the union does not even have 40% and filed for card-based certification, then the application is dismissed.

If the union has signed cards in regards to at least 55% of the workers on the application date, the employer is left with limited options to challenge the certification application. For example, there may be a status dispute, as to who is included in the count of the workers on the application date (e.g. the employer takes the position that some of the workers the union may have included, are in fact part of the management team). The employer will need to quickly determine who were the workers on the application date and identify any application issues, as it only has two days after it receives the certification package to deliver its response.

In the recent Ontario Labour Relations Board decision of *International Union of Operating Engineers, Local 793 v. Hard-Co Construction Ltd.*, the union had filed a card-based certification application. The employer attempted to challenge the certification application. The employer felt that the union membership cards were only signed by some of its workers, because they had been threatened, coerced, or deceived. The employer asked that, given the union's misconduct, a vote should be held. However, much of the allegations were in regards to another union that was also trying to unionize the workplace. In addition, the only clear and specific allegations of misconduct against the relevant union had come from employees who had not signed a membership card. The Board denied the employer's request for a vote and, as the union had signed cards in regards to at least 55% of the workers on the application date, the certification application was granted.

In light of the above, construction employers should be mindful of how quickly and easily a union can discreetly obtain signed membership cards from its workers and file a certification application on a date when the numbers would support automatic certification (or at least a vote). Further, construction employers should be aware that, if a certification application is filed, they will need to quickly and thoughtfully in responding to the application.

For more information or to discuss any potential unionization,
please speak with one of [our labour lawyers](#).

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