

January 12, 2000

To Interested Parties

Re: Labour Relations Regulation 3.1  
Additional Requirement for the Construction Industry  
Section 143, Declaratory Opinion - Case No. 41696

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(i) Background

1 The Construction Industry Review Panel, Stan Lanyon, Q.C. and Stephen Kelleher Q.C., was appointed by the Minister of Labour on July 16, 1997 to consider issues related to the construction industry. The Panel consulted with the various stakeholders and issued in the spring of 1998 its report and recommendations, *Looking To The Future: Taking Construction Labour Relations Into The 21<sup>st</sup> Century*. The Report included a discussion of access to collective bargaining and recommended a change to the Labour Relations Regulation:

In making a recommendation in this area, we are not questioning the legitimacy of existing membership relationships with any trade union. We recognize, however, that a key part of the certification procedures in this province is that they be confidently recognized as representing the true desires of employees with respect to unionization. This should be clearly demonstrated.

***Recommendation***

***A trade union making an application for certification for a construction bargaining unit, should be required to show evidence of current support for certification when it makes an application to the Board. We recommend a change to the Labour Relations Regulation to do this.***

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2 Effective June 1, 1999 the Regulation was amended by adding the following section:

**Additional requirement for construction industry**

3.1 In addition to the requirements of section 3, a trade union making an application for certification in the construction industry on the basis of active membership referred to in section 3(c)(ii) must attach an expression of support from those members in the following form:

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

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(Name of employee)

(Date)

3 The implementation of this new provision raised a number of policy questions. In order to address these questions the Board provided an opportunity for input from interested parties in the construction labour relations community including representatives from the Bargaining Council of British Columbia Building Trades Unions, the Independent Contractors and Businesses Association, the Construction Labour Relations Association of British Columbia, the Christian Labour Association of Canada, the General Workers Union of Canada and the Canadian Iron, Steel and Industrial Workers' Union. As a result of this consultation process a consensus was reached among the parties. The Board on its own motion has determined that it would be appropriate to set out the consensus as a policy in the form of a declaratory opinion.

(ii) Decision

4 Prior to the new Regulation 3.1, a union making an application for certification in the construction industry could rely on either a valid membership card signed within 90 days of the application for certification or the union could provide confirmation of active membership through dues payments. The basic criteria for union membership is set out in Section 3 of the Regulation:

- 3. For the purpose of establishing membership in good standing in a trade union where that trade union is making an application for certification, the following minimum criteria apply:

- (a) a membership card must be signed and dated at the time of signature;
- (b) a membership card signed on or after January 18, 1993 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;
- (c) within 90 days of the application for certification,
  - (i) the membership card must have been signed, or
  - (ii) active membership must have been maintained by dues payments.

5           The new Regulation sets an additional requirement for the construction industry where a union's application for certification relies on dues payment to establish membership in good standing pursuant to Section 3 (c)(ii). In this case, the union must also provide an expression of support from those members in the form set out in Regulation 3.1.

6           Pursuant to Section 3 of the Regulation, a traditional union membership card must be signed and dated within 90 days of the application for certification and does not require the name of the employer. Section 3.1, on the other hand, does not specify the length of time an expression of support form will be valid and whether there is a requirement to indicate the name of the employer on the form. Both these issues were canvassed with the parties and the following consensus was reached:

1. An expression of support form must be signed and dated by the employee within six (6) months of the application for certification.
2. An expression of support form will be considered as confirmation of the employee's wishes in support of an application for certification for the employer for whom the employee is working (or on a normal day off) on the date affixed to the card.

7 Accordingly, these two statements will be established as Board policy. Clearly these two policy statements do not address every potential issue that may arise. Other, specific issues will be dealt with as they arise during the normal course of the certification process.

LABOUR RELATIONS BOARD

**"LISA HANSEN"**

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VICE-CHAIR AND REGISTRAR

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