

Elimination of Card Check Fast Track Certification

Report of the Labour Caucus

Manitoba has enjoyed a period of relative labour peace for more than a decade, marked by few labour disruptions (strikes and lockouts) and positive overall labour-management relations. Labour peace has been very positive for Manitoba's economic performance, for employers, and for workers and unions alike.

The Minister of Growth, Enterprise and Trade has asked the LMRC for comments on a proposal to amend the current *Manitoba Labour Relations Act* to eliminate provision for fast-tracked union certification (auto certification) through the achievement of a majority sign-up (or card check) threshold of 65% or more.

The Labour Caucus of the LMRC strongly opposes the elimination of auto certification as a move away from affording workers with the ability to exercise their democratic right to join a union, free from intimidation or coercion.

However, it is our understanding that government intends to proceed with this change. Therefore, the following comments are offered to explain Labour's position and to recommend alternative remedies to address our chief concern regarding intimidation of workers and interference with free votes.

In the context of rhetoric about "restoring secret ballot votes", it is important to recognize that the *Act* already requires a secret ballot vote on union certification when 40% or more, but less than 65% of workers freely declare that they want to join a union by signing a union card.

Only in cases where 65% or more of workers (a two-thirds super-majority) freely sign union cards is a workplace eligible for fast-tracked (automatic) certification, subject to independent verification by the Manitoba Labour Board that sufficient cards have been submitted, that cards have been signed voluntarily, and that there has been no pressure or coercion of workers to sign cards.

Manitoba's current legislative framework has worked well: it has sustained a climate of labour peace, and supported workers in being able to freely express their will with respect to choosing to join or not join a union. Moreover, we are unaware of any broad-based employer lobby to change or eliminate auto certification.

The Labour Caucus is unclear why the proposal to eliminate automatic certification has come forward at this time – what is the "problem" with status quo that government is seeking to resolve with this legislative amendment?

At 65%, the democratic will of workers is clear – they support joining a union. Requiring that an additional vote be scheduled and carried out by the Labour Board by secret ballot is unnecessary, wastes resources of the Labour Board and opens the process for potential interference, intimidation or bullying of workers in an effort to dissuade a pro-union vote.

In fact, it has long been Labour's position that the current automatic certification threshold of 65% is, in fact, too high. At 65%, Manitoba's threshold is the highest of all provinces with fast-tracked certification. Labour believes that the more traditional simple majority of 50% plus 1 is a more

appropriate democratic test. The federal government is currently in process of moving back to a simple 50% plus 1 automatic certification threshold.

Auto certification greatly reduces the potential for employer interference with a certification vote.

It is an unfortunate reality that once a secret ballot vote is called, some employers engage in intimidation tactics to pressure workers not to vote for a union. Hinting or outright asserting to workers that that wages may be reduced, that benefits may be clawed back, that shifts or duties may change or be reassigned, or that job losses may take place, are among the tactics which have been used to interfere with free votes on whether or not to unionize. Workers are robbed of a free choice in instances when employers use their greater power in the workplace to intimidate their employees before a vote.

In a case just last year, in the midst of a union organizing drive by Workers United, workers at a major multi-national fast food / coffee franchise were threatened with losing their jobs if they voted to join the union. Fortunately, in this case, an audio recording was made of the employer's pointed (and illegal) threats. Faced with indisputable evidence of having committed an unfair labour practice, the employer backed-down and ultimately did not oppose certification.

If automatic certification is going to be eliminated – which the Labour Caucus does not support – then other measures need to be adopted to reduce the potential for employer interference and intimidation of workers. Ensuring the democratic right to form a union is fundamental to a fair society. The absence of automatic certification provisions makes it more difficult for workers to choose to join a union by exposing them to anti-union intimidation by employers. It is imperative that workers be protected to exercise their rights in a free and fair way.

In particular, we recommend that it be a legislated requirement that secret ballot votes be scheduled to take place within 5 days of a union's application (which already presupposes the achievement of 40% or more card sign-up).

At present, the Labour Board targets to schedule votes within 7 days, but statistics provided by the department indicate that this timeframe is extended for "exceptional circumstance" in 32% of cases – that's just shy of one third of total cases, a very substantial proportion.

The longer the period before a vote is held, the greater the risk of worker intimidation. Cases of "exceptional circumstances" should be limited and the Labour Board should be resourced adequately to achieve appropriate timelines.

The Manitoba Labour Board's Sub-Committee should be tasked with examining what the reasons are for 32% of votes not taking place within the 7 day time limit. Those barriers to a delaying a vote should be removed and at a minimum a pre-hearing vote should be conducted if there is a dispute about who is in the bargaining unit to minimize time for interference.

While Manitoba law has included provision for automatic certification for most of the last fifty years, provisions in other jurisdictions have varied across the country and over time. A recent pan-Canadian study by the federal government, *Union Certification Regimes and Declining Union*

*Density in the Canadian Business Sector*¹, concludes that the absence of automatic certification provisions is associated with declining union density.

The Labour Caucus believes that the elimination of auto certification in Manitoba will make it more difficult for workers to exercise their free will to join a union, which will in turn, depress union density, along with worker wages, benefits and health and safety standards.

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¹ Workplace Information and Research Division; Strategic Policy, Analysis and Workplace Information Directorate; Labour Programs
– HRSDC: [*Union Certification Regimes and Declining Union Density in the Canadian Business Sector*](#) (November 2013)