



Ontario Confederation of University Faculty Associations
Union des Associations des Professeurs des Universités de l'Ontario

Brief on Bill C-525 *Employees' Voting Rights Act*

**Standing Committee on Human Resources, Skills and
Social Development and the Status of Persons with
Disabilities**

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Introduction

Bill C-525, the *Employees' Voting Rights Act*, proposes amending the *Canada Labour Code*, the *Parliamentary Employment and Staff Relations Act*, and the *Public Service Labour Relations Act* to revise the union certification and revocation procedures.

The Ontario Confederation of University Faculty Associations (OCUFA), representing 17,000 professors and academic librarians in Ontario's universities, including those under federal jurisdiction, opposes Bill C-525 on the grounds that Bill C-525 does not protect employee secrecy, is contrary to established representation procedures, disregards employee choice, and promotes decertification.

Representation votes do not protect employee secrecy

Proponents of Bill C-525 emphasize the "secret" nature of the representation vote. However, representation votes provide employers and unions with a great deal of information about who did or did not vote and can thereby encourage interference with employee free choice.

Representation votes are typically held in the workplace. Employer and union scrutineers are present. They observe and record which employees vote and watch as the employee puts his or her vote into the ballot box. After the vote, labour boards release detailed information about the vote, typically including the total number of ballots cast, the number of ballots in favour of certification, and the number against.

Therefore, both the employer and union know which employees voted and which did not, and know how many ballots were cast for and against unionization. Particularly in smaller bargaining units, or where few ballots are cast in one direction, it is likely irresistible for employers or unions to refrain from speculating how individuals voted. This encourages employers and unions to draw conclusions about, and possibly penalize, individual employees' choices.

Representation votes encourage employer interference

Research shows that employer unfair labour practices during certification are not only common, but are intentional and highly effective at defeating employees' efforts to unionize. Contrary to the claims of many proponents of C-525, evidence also suggests that employers, rather than unions, are more likely to interfere in employees' representation decisions.

One study of published board decisions found 78% of all certification unfair labour practices were filed against employers and 88% of resulting unfair labour practices findings were made against employers. The study also found that illegal firings of employees and illegal employer speech gave rise were the most common forms of

employer misconduct in these cases.¹ More generally, studies have found that 12 percent of managers surveyed admitted to engaging in what they believed to have been unfair labour practices,² and that at least 11.6 percent of union organizing cases involved an employer unfair labour practice.³

Employer union avoidance efforts have also been demonstrated to negatively affect the long-term labour management relationship, including being associated with early decertification and need for third party assistance in concluding bargaining.⁴

Numerous studies of several Canadian jurisdictions have concluded that introduction of a mandatory vote certification procedure is associated with a substantial reduction in the probability of certification,⁵ with this negative effect concentrated on the private sector.⁶

A subsequent study suggests that such reductions in the likelihood of certification may be substantially attributable to employer unfair labour practices. Examining representation elections for private sector units in British Columbia between 1987 and 1998, encompassing both card-based and mandatory vote certification procedures, this study concluded that claims of employer unfair labour practices had at least twice the negative effect on certification success under vote as compared to card-based certification.⁷

Contrary to established representation procedures

Most Canadian jurisdictions employ card-based certification procedures in their general labour legislation. Those jurisdictions which do use mandatory vote procedures, without exception, provide that a majority of ballots cast must be in favour of unionization in order for certification to be granted.

¹ Sara Slinn, "No Right (to Organize) Without a Remedy: Evidence and Consequences of Failure to Provide Compensatory Remedies for Unfair Labour Practices in British Columbia" (2008) 53 McGill L.J. 687.

² Karen Bentham, "Employer Resistance to Union Certification" (2002) 57 *Revs. Inds./ Ind. Rel.* 159.

³ Anne Forrest, "Effect of Unfair Labour Practice Complaints on Certification and Collective Bargaining" in Michel Grant, ed., *Industrial Relations Issues for the 1990's: Proceedings of the 26th Conference of the Canadian Industrial Relations Association, 1989* (Quebec City: Canadian Industrial Relations Association, 1989) 423.

⁴ Bentham, *supra* note 2.

⁵ Sara Slinn, "An Empirical Analysis of the Effects of the Change from Card-Check to Mandatory Vote Certification" (2004) 11 CLELJ 259; Sara Slinn, "The Effect of Compulsory Certification Votes on Certification Applications in Ontario: An Empirical Analysis" (2003) 10 CLELJ 367; Chris Riddell, "Union Certification Success under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998", (2004) 57 *Industrial & Labor Relations Review* 493; Chris Riddell "Using Social Science Research Methods to Evaluate the Efficacy of Union Certification Procedures" (2005) 12 CLELJ 377.

⁶ Michele Campolieti, Chris Riddell and Sara Slinn, "Labor Law Reform and the Role of Delay in Union Organizing: Empirical Evidence from Canada" (2007) 61 *Indus. & Lab. Rel. Rev.* 32.

⁷ Chris Riddell, "Union Certification Success under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998", (2004) 57 *Industrial & Labor Relations Review* 493.

The certification process proposed in Bill C-525 is unlike that employed in any Canadian jurisdiction. It would require that a majority of all employees in the unit vote in favour of unionization in order for the union to be certified. As a result, in a unit of 100 employees, if all 50 ballots cast were votes in favour of unionization, the certification application would be denied. Although 100% of the votes cast were in favour of unionization, only 50% of the unit would have voted for certification, and the vote result would not constitute a majority of the bargaining unit.

The effect of this rule is not only to count a non-vote as a vote against certification, but also to disregard employee choice about whether to participate in the vote.

Counting non-voters disregards employee choice

If it is the case that the representation vote procedure provides employees with a free choice about how to vote (for or against certification), then it follows that it also provides employees with a free choice about whether or not to vote. Both employee decisions should be respected.

An employee who chooses not to vote has chosen not to weigh in on the certification question. Perhaps the employee does not have strong feelings about whether or not the proposed bargaining unit is certified. Perhaps the employee is content to let his or her co-workers decide on his or her behalf. As long as this is a freely made decision not to vote, then this decision should be respected.

Determining the representation vote outcome based on the majority of votes cast respects employee choice about voting. This approach takes into account all ballots cast: for and against unionization, thereby respecting all expressed views.

In contrast, determining representation vote outcomes based on the majority of the unit, as proposed by Bill C-525, discounts the weight of employee choice expressed in the form of ballots cast. It also removes free choice from those workers who chose not to cast ballots, substituting the presumption that the workers' free choice not to vote means the same as a choice to vote against certification. This does not respect or protect employee choice.

Decertification

Bill C-525 proposes to reset the default outcome of a decertification vote. Where at least 45% of employees in a bargaining unit indicate a desire for revocation, a decertification vote will be held.

Currently, a majority of ballots cast in a decertification vote must be in favour of revocation in order for decertification to be granted. Otherwise, the certification will remain in place. Bill C-525 proposes to reset the default outcome for these votes to

become decertification. Under this proposal, unless a majority of employees in the unit vote for continued representation, the bargaining unit will be decertified.⁸

Therefore, if a vote is held and no employee votes either for or against decertification, decertification will result as a majority of employees have not voted for continued representation.

Conclusion

The amendments proposed by Bill C-525 are not designed to achieve the asserted purpose of ensuring free employee choice about union representation. In contrast, the evidence clearly demonstrates that Bill C-525 is designed to disregard employee free choice, to construct representation procedures which invite interference in employees' representation decisions, and to promote decertification in the absence of clear evidence of employee desire for revocation of bargaining rights.

For all these reasons, OCUFA opposes Bill C-525.

⁸ In the case of the *Public Sector Labour Relations Act*, 55% of employees in the unit must vote for continued representation in order to avoid decertification.