

**Presentation to The Changing Workplaces' Review
by the Canadian Office and Professional Employees Union (Ontario)**

Glenn Wheeler
Legal Counsel

Introduction

COPE has 33,000 members across Canada in the public and private sectors. In Ontario, we have 21 locals representing 6,000 workers.

COPE's submissions

1. Ontario should expand the system of card-based certification from the construction industry to all sectors covered by the *Labour Relations Act, 1995*
2. Ontario should expand union access to worker contact information for organizing purposes
3. Ontario should provide for easier access to binding first-contract arbitration

Government must establish a fair and neutral environment for workers to decide what is best for themselves. We do not ask that the government intervene to make it more likely that unaffiliated workers *would* choose to organize, only that the environment be such that they can make that decision for themselves free of reprisals, free of threats and intimidation, and free of fear.

The current system of open voting, which on the surface would appear to be reasonable, is rife with bias and the potential for abuse by any employer who would view the introduction of a union in a negative light. Here are just a few of the things that occur when a vote is held to consider an organizing union:

- Only one side (management) has access to the voters, and the voters' information
- Only management can hold meetings or discuss options in the workplace
- Canvassers or those interested in Union representation must work in secret
- Management can bring workers together into meetings (either in groups, or one on one) where intimidation and threats can be used with very little chance of consequence.
- Canvassers for Unions routinely face threats of reprisal, dismissal, and have their working conditions changed to serve as an "example" of what happens to those who support a unionized workplace.
- The deciding vote is held in the employers building under the eye of management supervisors.

To suggest that these conditions are fair, and allow workers full access to democratically decided outcome is to ignore the reality of the current workplace.

A return to card-based certification

For almost 50 years, the standard method of choosing union representation was card-check certification. Bill 144 re-instated this method for the construction sector in 2004, and it needs to be re-instated for all workers in Ontario.

Card-check certification requires every person who wishes to be represented by a union to sign a legal document or "card". In this way, as in all other legal matters, the properly witnessed signature assigns an executor to represent an individual's interest. In no other arena is a person challenged with a public vote to determine whether they have properly assigned such interests.

For all the reason's previously stated that place undue pressure on workers and leave them open to intimidation and reprisal, the current voting system needs to be changed. Card-check certification is a proven democratic method of making a choice; it neither guarantees nor works against organizing efforts, but rather serves to level the playing field so that workers have the freedom to make their own choices.

Finally, if a voting option is still required, then the option of moving it to a neutral location is key component in removing the bias from the procedure.

Access to voter information and increased ability for open union communication

Access to voter information is another factor that would make the organizing environment far more neutral. While many employers still work in circumstances where all their employees are housed under one roof, that is by no means the norm as it once was. More and more, workers are decentralized, some work from home, or remote locations.

Because of these type of changing environments it is crucial that access to voter information (who exactly may be in a potential bargaining unit) is accessible to canvassers and organizers. Once again, the requirement that voter information be transparent does not guarantee any outcome. It does ensure that all involved in a potential decision are informed and able to have all the information necessary to make the best decision they can.

We suggest that the *Act* empower the Ontario Labour Relations Board to order production of that information upon presentation of cards signed by a reasonable percentage of employees in a proposed bargaining unit – 20 per cent, we suggest.

Other jurisdictions have recognized the importance of legal changes that take into account modern approaches to communication – email and internet, in particular. In the United States, the National Labor Relations Board has ruled that employees have a substantive right to use their employers' computer networks and email systems to engage in union organizing on their own time. See *Purple Communications Inc.*, 361 NLRB No. 126 (December 11, 2014).

Increased access to binding first-contract arbitration

Even with all the current barriers to organizing and the employer bias that exists in the process, many workers continue to persevere and choose to be represented by a union. In the current environment, even when they have made this decision it becomes apparent that only the first of many barriers have been crossed. Many employers continue to resist the democratic wishes of their employees by delaying or simply refusing to bargain in good faith once a union has been elected.

Strengthening the current labour law language regarding first contract arbitration, or better yet making it an automatic option, would serve as an incentive for employers to come to the table with a mind to establishing a fair and respectful relationship with their employees and their new union representatives.

First contract arbitration should be available as of right if 30 days have elapsed since the employees could legally strike and the employer could lock out employees.

Without a stronger and quicker path to first contract arbitration (if necessary) the bias continues to lie with the employers who maintain the ability to drag out the actual negotiations that codifies the decision their employees have freely made.

