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FAST FACTS

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Automatic Certification at Fifty Percent Plus One: Now is the Time

As a member of the International Labour Organization, Canada and the provinces are obliged to respect, to promote and to realize in good faith the fundamental human rights identified in the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*. These rights include "freedom of association" or, in other words, the right to be a member of a trade union and participate in collective bargaining. These rights were confirmed, in a six to one Supreme Court of Canada decision on June 8, 2007, that collective bargaining is protected by the Charter of Rights and Freedoms. In their ruling, Chief Justice Beverly McLachlin and Madam Justice Louise LeBel stated that: "The right to bargain collectively with an employer enhances human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work."

Canada and some provinces, including Saskatchewan, have fulfilled this obligation by granting automatic certification when 50% plus 1 of bargaining union members sign a membership card. Other provinces have balked at this obligation and sought to frustrate efforts by workers to gain trade union rights, either by requiring a vote to determine support for unionization, or, as in Manitoba, by setting the threshold for automatic certification so high that the process becomes meaningless.

Prior to the 1990s workers in Manitoba could get automatic certification by signing up 55% of eligible workers in a bargaining unit. In the 1990s,

Conservative governments raised the threshold for automatic certification to 65%, and then subsequently required that all applications for certification be subject to a vote.

In 2000, a newly-elected NDP government amended the *Labour Relations Act* to un-do some of the more regressive changes instituted by the actions of previous Conservative governments. But on the question of certification the government caved in to the clamour of business, and instead of reverting to the legislation that prevailed prior to the 1990s, imposed a threshold of 65% for automatic certification, a change that did nothing to improve conditions for the formation of unions.

Research evidence confirms that workers are more likely to unionize and achieve certification in jurisdictions that rely on a card-based system with a threshold of 50 % plus 1 for automatic certification. In 2005, the Fraser Institute, a relentless opponent of trade union rights that would improve workers' conditions, published a paper (*Explaining Canada's High Unionization Rates*) intended to explain the gap in unionization rates (the percentage of non-agricultural paid workers in unions) between Canada and the U.S. In 2004, the rates for Canada and the U.S. were 31.8% and 13.8% respectively. The difference is large and it is significant. Moreover, similar disparities exist in both the private (19.0% in Canada as compared to 8.6% in the U.S.) and public (75.5% in Canada as compared to 40.7% in the U.S.) sectors.

The paper's authors argue that one of the key



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
MANITOBA OFFICE

309 - 323 Portage Avenue
Winnipeg, MB R3B 2C1
T 204.927.3200 F 204.927.3201
ccpamb@policyalternatives.ca
www.policyalternatives.ca

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factors explaining the difference in rates between Canada and the United States is that the federal jurisdiction and five provinces in Canada allow the granting of certifications based on card counts, a practice which increases both “unionization success rates and certification attempts.”

The legislation in Manitoba governing certification is, in the Canadian context, paradoxical. On the one hand, the legislation allows for automatic certification with a 65% sign-up rate. On the other hand, the legislation requires a secret ballot for all applications with a sign-up rate of less than 65%. The paradox exists because in situations where the sign-up rates are 65% or more, the outcome of a secret ballot vote would almost invariably be a slam dunk.

The problems associated with secret ballots are likely to be especially onerous when sign-up rates are in the 40% to 60% range, because employers are likely to commit significant resources to winning the vote through intimidation, harassment and other questionable tactics. This is evident from the historical experience in the United States where the combination of employer contempt for labour laws and democratic rights and pro-employer labour boards and courts have undermined trade unions and collective bargaining. It is the possibility of losing an election that motivates unions to try to achieve the 65% threshold. Unfortunately, the resources required to sign additional members not only drive up the costs of a given unionization drive, but also reduce the number of organizational campaigns that can be undertaken for a given quantity of resources.

At present, unions in Canada are operating in what some commentators have termed a cold climate. The term refers to the fact that neither employers nor governments are favourably disposed to unions. This is reflected in the fact that Canada’s unionization rate has been declining: during the 1980s, the unionization rate averaged 35.7%; it remained at 34.4% through the 1990s; since 2000, however, it has dropped to about 30%.

The unionization rate for Manitoba in 2006 was 34.8%, well above the 29.7% rate for Canada and

exceeded only by Saskatchewan, Newfoundland and Quebec. While Manitoba seems to be holding its own, it is important to recognize that the unionization rate in this province has remained constant for the past few years. Moreover, this stability in the overall rate masks the fact that many of the same forces that have eroded trade union memberships in other jurisdictions are also at play in sectors of the Manitoba economy. In manufacturing, for example, the unionization rate in Manitoba was 29.7% in 2006, a rate about the same as the national average, but below the rates in four other provinces, namely, British Columbia (31.8), Saskatchewan (35.1), Quebec (39.0) and Newfoundland/Labrador (40.7).

The concern here is that if these forces gather strength, the base of Manitoba’s labour movement may be eroded. Faced with declining memberships, unions would be hard pressed to initiate and sustain the organizing drives necessary to maintain forward momentum. This problem has intensified at the national level in recent years with the concentration of anti-union employers in the least organized sectors of the economy (banks, Wal-Mart and its competitors, major hotel and restaurant chains, and corporate agriculture, for example). The consequences will be especially grave for private-sector unions, because declining memberships will undermine their capacity not only to organize the unorganized but also to maintain services to existing members. Such a development would clearly have adverse consequences for working people and the community as a whole.

The Manitoba government should take action now to mitigate this threat. The best place to start would be to reduce the threshold for automatic certification to 50% plus 1. What reasons can there be to fail to support workers’ democratic right to organize in this way?

- Errol Black and Jim Silver

Errol Black and Jim Silver are members of CCPA-Manitoba’s Board of Directors and authors of Building a Better World: An Introduction to Trade Unionism in Canada, by Fernwood Press.



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