

The Structure and Role of Canadian Labour Boards

Presentation by Akivah Starkman
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Labor Boards in North America
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Overview of Canadian Industrial Relations

- union density: 31.3%
- some 4 million union members
- approximately 1,000 unions; 25,000 bargaining units
- 3,000 - 4,000 certification applications/year
- 250 decertification applications/year

Jurisdictional Division

- division of jurisdictional authority between federal and provincial governments
- provincial governments have jurisdiction over most Canadian industries and workers
- founded in Constitution Act

Common Legislative Features (1)

- exclusive jurisdiction for unions
- government-administered process for gaining/losing representation rights
- fixed-term, legally-enforceable collective agreements
- duty to bargain in good faith

Common Legislative Features (2)

- legislated process re. collective bargaining & acquisition of right to strike/lockout
- no strikes/lockouts during agreement
- rights arbitration
- conciliation
- Labour Boards

Labour Boards: Structure

- Chairperson (neutral)
- Vice-Chairpersons (neutral)
- Members (representative)
- fixed-term political appointments
- full-time and/or part-time members
- staff (public servants): legal, mediation, investigation, administration
- quasi-judicial; arm's-length/independent

Labour Boards: Roles & Responsibilities (1)

- “encouragement of free collective bargaining and the constructive settlement of disputes”
- acquisition of bargaining rights
- determination of bargaining units
- review of bargaining unit structures; sales of business; common or single employer; successor rights

Labour Boards: Roles & Responsibilities (2)

- unfair labour practice complaints
- duty of fair representation
- “essential services”
- illegal strikes or lockouts
- alternative dispute resolution
- unlawful reprisals under other Acts (e.g. health and safety, environmental protection)
- employment standards (some provinces)

Gaining Representation Rights

- certification of non-union bargaining units
- raids
- union mergers/bargaining unit reviews
- single-employer designations
- successor rights in sales of business, privatization
- voluntary recognition

Losing Representation Rights

- revocation
- raids
- abandonment

Certification: Issues

- jurisdiction
- timeliness of application
- appropriate bargaining unit
- representativeness of union
- majority support

Certification: Process

- union signs up members
- application to Labour Board
- investigation by staff
- in-camera review by Board (rarely public hearing)
- Board may or may not require vote
- Board order establishing union representation

Labour Boards: Law and Practice

- duties and powers set out in enabling legislation
- administrative tribunal: less formal than courts
- “complaint-driven” enforcement
- rules of natural justice
- privative clause, but subject to judicial review on specified grounds, up to Supreme Court of Canada
- Court decisions provide jurisprudence
- labour board decisions provide guidance to subsequent decisions

Application of Law: Other Bodies

- courts (appeals of Board decisions, arbitration awards)
- arbitrators (grievances; rights disputes)
- other tribunals (human rights, safety and health)
- mediation services (jointly administer most Labour Codes)
- Ministers of Labour
- federal & provincial Parliaments (enact labour and ad hoc legislation)

Labour Boards: Transparency

- public hearings
- Access to Information Act
- representative members
- web sites
- client consultations
- conferences
- Regulations, Practice Notes, newsletters

Dissemination of Decisions

- published decisions, available to general public
- web sites (www.cirb-ccri.gc.ca; www.lancasterhouse.com)
- electronic compendiums e.g. Quicklaw
- published compendiums e.g. Canadian Labour Relations Boards Reports

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