

**SUBMISSION
TO
SECTION THREE ADVISORY COMMITTEE
RESPECTING THE
BRITISH COLUMBIA LABOUR RELATIONS CODE
BY THE
BRITISH COLUMBIA AND YUKON TERRITORY
BUILDING AND CONSTRUCTION TRADES COUNCIL**

Submitted February 24, 2003
to the
Labour Relations Code Review Committee
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The British Columbia and Yukon Territory Building and Construction Trades Council (BCYT-BCTC) is the umbrella group for 21 locals affiliated to 13 international unions engaged in the construction. We appreciate the opportunity to provide a presentation to the Section 3 Review Panel.

We represent the following Building Trades union locals in B.C.:

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths,
Forgers & Helpers Lodge 359

International Brotherhood of Bricklayers and Allied Craftworkers
Local Union 1 and Tilesetters Local Union 3

Operative Plasterers and Cement Masons International Association
of the United States and Canada Local Union 919

International Brotherhood of Painters and Allied Trades
Local Unions 138, 1527 and 2009

International Brotherhood of Electrical Workers
Local Unions 213, 230, 993 and 1003

Hotel Employees and Restaurant Employees International Union Local 40

International Association of Heat and Frost Insulators & Asbestos Workers
Local Union 118

International Association of Bridge, Structural and Ornamental Ironworkers
Local Union 97

Construction & Specialized Workers' Union Local 1611

International Union of Operating Engineers Local Union 115

United Association of Journeymen and Apprentices of the
Plumbing and Pipefitting Industry of the United States and Canada
Local Unions 170 and 516

Sheet Metal Workers International Association Local Unions 276 and 280

International Brotherhood of Teamsters Local Union 213

INTRODUCTION:

The BCYT-BCTC is deferring a discussion of the Terms of Reference Issues to submissions by the BC Federation of Labour and the Canadian Office of the Building and Construction Trades Department, AFL-CIO. To summarize the positions of those submissions, we support the status quo and arguments that current provisions be left in place for the following issues:

- Issue 1: Definition of Employee
- Issue 5: Changes In Representation (raiding)
- Issue 6: Revocation of Bargaining Rights (partial decertification)
- Issue 7: Revocation of Bargaining Rights (lengthy closure)
- Issue 9: Successorship (bankruptcy)
- Issue 11: Mergers of Union Locals
- Issue 14: Expedited Arbitration

We support the arguments presented by the BC Federation of Labour and the Canadian Office of the Building and Construction Trades Council on the outstanding issues:

- Issue 2: Definition of Picketing
- Issue 3: Unfair Labour Practices
- Issue 4: Duty of Fair Representation Complaints (Sections 12 and 13)
- Issue 8: Applications for Certification (Section 33(10))
- Issue 10: Successor Rights and Obligations (Section 35)
- Issue 12: First Collective Agreements (Section 55)
- Issue 13: Last Offer Votes (Section 78)

The Building Trades Council has opted to concentrate this submission on the need to add to the terms of reference; specifically we urge the Panel to include recommendations for special provisions in the Labour Code to govern labour relations in the construction sector. It is our contention that all of the issues proposed by the Section 3 Panel that relate to construction would be profoundly and positively impacted by a special section for the construction industry in the Labour Code.

Over the last two decades, the BC construction industry has degenerated from stable markets, high quality and training standards to an environment of ruthless competition and declining standards. Market pressure and a decline in worker skills are largely responsible for the biggest debacle in the history of the BC construction industry, namely leaky condominiums. Shoddy construction practices have been identified as a leading factor in this social disaster that has affected some 50,000 owners and cost over \$1 billion in repairs.¹ Since the

¹ Barrett Commission of Inquiry into the Quality of Condominium Construction in BC, June 1998 and March 2000.

Commission of Inquiry into leaky condos, leaky schools and hospitals have added to the shame. The quality and safety consequences of shoddy construction for consumers, business and the public at large will continue to show up in the coming years.

The "crisis" in construction encompasses more than just shoddy workmanship. A looming skills shortage, an unregulated and dysfunctional market, a large and growing black-market in labour and materials and a Labour Relations Board reeling from budget cuts and unable to respond to construction labour matters in a timely manner are now systemic to the BC construction industry.

A SPECIAL CLAUSE FOR THE CONSTRUCTION INDUSTRY IN THE LABOUR CODE, STABLE CONSTRUCTION MARKETS AND THE NATURE OF THE CONSTRUCTION INDUSTRY:

There are many elements to a stable construction market. Establishment of a separate section of the Labour Code dealing with construction and expressly recognizing the unique character of the industry is one of these elements.

We believe that the special nature of the construction industry and the unique labour relations setting that it produces must be recognized if we are to develop a legislative framework that allows balanced economic relations between consumers, management and labour in this industry.

The relationship of workers to the workplace and to their employers is vastly different in construction than in typical industrial, commercial and institutional settings. Construction companies commonly have no permanent work sites. Even those larger companies that maintain permanent work yards perform only a very small part of their work at those sites. Most of their work is carried on at temporary construction sites that may be scattered across the province. Each work site may involve quite different types of construction and will employ a changing group of workers from a variety of trades or skill groups. Workers are called to work individually and may be required for only one or two days at a time and may be laid off and recalled several times during the course of a particular project according to the specific skill requirements of each stage of construction. These workers may or may not be shifted from site to site. The employer is not required to call a particular employee back for subsequent stages of the work or even to retain that employee from one project to the next. There may be dozens of companies working on the same site, each performing only a small part of the work. It is not unusual for employees to be unaware of the exact identity of their employer until they receive their first paycheque on a job. Often the workers have no information about other work sites or other activity carried on by that firm and may never meet fellow employees. The relationship of the worker to the individual project or employer can be

described as transient and insecure. The prospects of workers trying to organize themselves into a union in these circumstances have always been challenging. In the time it takes for workers in a non-construction work place to get to know each other and collectively decide to join a union, all but the largest construction projects would have been completed.

The historical response to these economic realities has been to organize craft or skill groups company-wide and to supply members from union hiring halls, rather than trying to organize each individual project. Organizing strategies that pull workers together have been necessary so that the various groups of workers that pass through a site or a company could assist each other by refusing to allow the employers to pick and choose when to use union or non-union workers. Non-construction unions are able to gain a legal right to bargain for all workers in a shop or factory. Construction workers have had to organize and negotiate by gaining a legal right to bargain for those union workers possessing a specific group of skills. If this right to bargain could not be enforced, construction workers would have no bargaining power and would have to work under terms dictated solely by the employer.

Our society's recognition of the right to collective bargaining is based on a broad consensus that working people should not be subjected to a one-sided economic bargain. If this right was to fully extend to construction workers, the legislation must recognize the unique nature of the construction industry.

The construction industry requires access to a highly skilled and mobile workforce that can adapt to the unique challenges presented at each project. Workers need to be trained and skilled in the full scope of each construction trade in order to ensure timely, quality and safe production.

Construction unions, through joint management/labour training boards, have traditionally ensured a steady supply of fully qualified workers. As the "Building Trades" market share declined over the last 20 years, so too has the capacity to train. A shortage of journey level workers has had a serious impact on the industry as a whole.

In order to meet the skills shortage the provincial government is now proposing to weaken certification of trade qualification rules, allowing for "task or modular based" certificates. Informed critics of "task training", including over 70% construction contractors (union and non-union alike)², claim that the new "certificates" will make the workforce less flexible and less able to meet the unique challenges at construction worksites. The new "task trained" certificates will also be useless outside of the province. Construction worker mobility is

² Apprenticeship: A Construction Industry Perspective, BCCA Task Force, Survey of 366 contractors, April, 1997, p.5: 73.33% of respondents supported full scope of training; 26.67% support "task training."

enabled by "Red Seal" certifications. "Red Seal" sets a national standard so that employers across the country share a common measure about the skill sets for the various trades. Future BC workers, certified only to perform certain tasks, will be at a disadvantage should they wish to travel outside the province for work in the construction industry.

Among other recommendations, the 1997 review of the construction industry by the Ministry of Labour proposed the establishment of a special section in the Labour Code dealing with construction. According to the review, "The current evolution of the Code dealing with other sectors through recent Code changes and the key policy decisions of the Board have attempted to create a balance between access to collective bargaining and industrial stability. Those measures have either failed to address the issues in construction or expressly avoided application to construction because of the distinct nature of this industry. A separate section of the Code could address the realities facing construction employers, unions and workers." In its analysis the review panel found that "in other jurisdictions, a separate part of labour relations legislation has often been created for this industry. The primary purpose has been to address the ongoing lack of cohesion in contractor bargaining through the imposition of some form of mandatory employer bargaining scheme... and to address related other matters arising from such a structure."

It is worthwhile for this Section 3 Panel to renew its interest in a special section in the Labour Code for construction given the ongoing problem with construction markets and their impact on consumer concerns.

We propose that all provisions relating specifically to construction should be grouped in a separate section of the Code. That section should have a purpose clause that recognizes the distinctive features of the construction industry. In particular, that clause ought to recognize the transient nature of employment in the industry, the traditional use of union hiring halls to provide contractors with access to the pool of skilled union workers and the resulting need to promote fair, stable, and orderly industry-wide multi-trade bargaining.

The establishment of a separate section for construction will provide clear legislative recognition of the uniqueness of the industry and deter the unintended transfer of inappropriate concepts and precedents into the application of construction labour law. It would also prevent the unintended transfer of concepts appropriate only to construction from migrating to areas of the Code dealing with other industries. For example, we do not advocate changes that would contradict the policies of the Board with respect to appropriateness of bargaining units outside the construction industry. In concrete terms this would mean that the trend to larger units and all-employee units outside construction would continue to occur while the trend to craft units

and industry wide council based negotiations could mature in the construction sector.

A revised Code should contain a clear statement acknowledging the special economic and structural characteristics of the construction industry and recognizing, in particular, that the rules and contract provisions developed by unions and employers in the industry to protect their exclusive access to the skills of the unionized workforce are necessary to preserve the bargaining power of the parties and the economic competitiveness of the unionized sector.

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