

# **The Unionized Workplace**

## **– The Effects of Union Certification**

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January 29, 2004



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## I. INTRODUCTION: DEALING WITH LABOUR LAW

### (a) Why is Labour Law so Different from Employment Law?

Many aspects of the law can be understood intuitively, because they evolve out of a social consensus regarding what is right and wrong. It is not difficult, for instance, to understand that an employee cannot be terminated without notice unless there is just cause. It is a rule based on notions of fairness.

Labour law, however, is different from many other areas of law. Unlike many other areas of law labour law is built around “collective” rights, not individual rights. This fundamentally changes the employer-employee relationship. Also, many of the contentious rules embodied in the British Columbia *Labour Relations Code* are not the result of social consensus, but rather represent a series of codified initiatives by powerful opposing political forces.

### (b) Entering a Different World

This paper is written from the employer’s prospective and focuses on perhaps the two most important times in labour relations; the period leading up to and the period immediately after a union has successfully organized a workforce and has become certified as the representative for a particular group of employees, the “bargaining unit”.

These are the periods when the workplace will come under the most intense scrutiny from outside. Short of a strike or lockout situation, it may also be the tensest period in the relationship between employees and management.

## II. THE CERTIFICATION PROCESS

The British Columbia *Labour Relations Code* (the “Code”) provides that every employee is free to join a union and participate in its activities. It is an unfair labour practice under the Code for anybody to interfere, or attempt to interfere with an employee’s right to participate in a trade union by discriminating, threatening or penalizing an employee. The certification process commences when the union files an application for certification with the British Columbia Labour Relations Board (the “Board”). The Board is an independent, neutral administrative tribunal that decides matters involving, unions, employees and employers under the Code.

When a union files an application for certification, what it is seeking is to be recognized as the exclusive representative or bargaining agent for a group of employees. Once certified, the employer can no longer bargain with individual employees with respect to terms and conditions of employment. Upon certification, an employer must bargain with the union who acts as the exclusive bargaining agent for the employees.

The process by which a workplace becomes “organized” usually begins long before an application is made to the Board. Sometimes employees in non-unionized workplaces contact a union to help organize the workplace. A growing trend has seen unions actively targeting traditionally non-unionized sectors in an attempt to increase certifications. An example of this is the attempts by the Canadian Autoworkers (CAW) to organize McDonald’s and Starbucks as

well as other service sector employers. In order to increase their profile, unions will hold information meetings, distribute leaflets and partake in other forms of advertising to spread their message.

During an organizing campaign, employees who support the union sign membership cards. By signing a membership card an employee is saying “yes, I want to join the union and have the certified union represent me and my co-workers.” If the union has support from at least 45% of the employees, the Board will order a secret ballot vote to determine certification. If a vote is held, the union will be certified if a majority of those who cast ballots vote in favour of certification. The Code also gives the Board authority to grant automatic certification if the Board determines that unfair labour practices prevented the union for obtaining the required support.

Employees who do not sign membership cards or who vote against a union will still be represented by the union if the union obtains the required support for certification. Employees who initially sign membership cards can revoke their support for the union. Employees have until the end of the day on which the union submits its application to the Board to revoke their membership card. To revoke membership, an employee must deliver a signed, written letter revoking their membership to **both** the union and the Board. The letter must state that the employee wants to cancel their membership in the union. The letter must be dated and include the proper name of the union, the union local number and the employer’s name.

### **III. PRE-CERTIFICATION ISSUES**

#### **(a) Why Employees Join a Union**

Many employers assume that the reason employees want to join a union is because of money and benefits. The fact is that these are rarely the reasons for unionization. According to one study, the following are the top reasons given for employees to join a union:

- (i) the company only gave employees a minimum amount of information about the company’s economic state, goals, achievements, etc.
- (ii) the company introduced changes in procedures and policies without advance notice or subsequent explanation
- (iii) the company made key decisions affecting employees without soliciting their opinions or advice
- (iv) management downplays or ignores employee dissatisfaction

The underlying theme of these factors is communication, or lack thereof. The problem of poor communication can often be traced to a poor manager or management team. Lack of effective upward and downward communication between employees and management is a prime reason for union success. Poor communication often results in employees feeling disenfranchised and leads to an “us/them” attitude towards management.

Another survey conducted in 600 unionized companies revealed the motivation of employees who signed union cards in order of importance as follows:

- (i) fair treatment of complaints
- (ii) good prospects of job security
- (iii) management awareness of employee qualifications and goals
- (iv) praise and credit for good suggestions
- (v) corrections made in friendly and constructive way
- (vi) raises in pay based on merit
- (vii) promotion of most qualified employee - no favouritism
- (viii) praise and recognition for better than average performance
- (ix) management expectations of a reasonable amount of work
- (x) wages comparable to that of the going rate in the community

### **(b) Union Organizing Techniques**

Most unions employ “organizers” who’s job it is assist and encourage non-unionized workplaces to become certified. Organizers are specialists in their field. They know the industry they are organizing and know what employees are looking for. Organizers are usually skilled sales people who speak the language of workers and are able to trigger the sour spots of disgruntled workers.

Organizers will research both the employees and the company. Employees can usually be divided into three groups: those ready to join with little or no effort; those ready to join after convincing; those that will never join. They will also research the company, including: its history, financial condition, management style, customers, work practices and wages and benefits.

Any successful campaign requires secrecy, expediency, information (list of employees, phone numbers, addresses) and intensity. Organizers’ goal is to get employees to sign membership cards. Some of the tactics employed to induce sign-ups include:

- (i) use of people of influence to campaign
- (ii) logical persuasion
- (iii) peer pressure - everyone else has signed
- (iv) threats (this is illegal)

- (v) promises (e.g. wage increase; job security)
- (vi) persistence
- (vii) ego gratification
- (viii) misrepresentation (e.g. sign up for more information)

**(c) The Cost of Unionization**

Employees who join a union are generally required to pay union dues to the union. These amounts are often a % of wages or a set amount that is deducted by the employer and remitted to the union on the employees behalf. The cost to management however, is often far greater. There are the obvious costs, including strikes and compensation increases, but there are other costs. Some surveys have indicated that in newly unionized organizations, administrative expenses increased by as much as 20%.

Some of the increased “costs” to management include:

- (i) creation of divisiveness in the workplace due to splitting of employees into pro-union and anti-union groups
- (ii) loss of flexibility in dealing with employees
- (iii) loss of flexibility in serving customers
- (iv) productivity and efficiency losses due to the classification of jobs and restrictions on work assignments
- (v) loss of individual compensation determinations
- (vi) selection of people for promotion weakened: seniority may take precedent over skill and ability
- (vii) ease and speed of handling employee discipline erodes including difficulty in removing problem employees
- (viii) costs of preparing for and carrying on bargaining, including lost employee time

**(d) What Management Can and Cannot Say to Employees - Pre-Certification**

The *Code*, in protecting the right of employees to join a trade union, restricts what management can say to employees. A company that wants to make its views known must not only be careful about what is said but also the way in which it is said.

Prior to recent amendments to the *Code*, employers were not required to remain neutral in the face of a union organizing campaign, however, communications were limited to facts or opinions

that were both “reasonably held” and restricted to matters “with respect to the employer’s business”. The recent amendments to the Code appear to give an employer greater latitude to express its views concerning union representation. These amendments were considered by the Labour Relations Board in *Convergys Customer Management Canada Inc.*, BCLRB No. B62/2003. In *Convergys*, the Board concluded that communications were no longer restricted to matters with respect to an employer’s business but could be on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union. The Board also concluded that an employer’s views expressed in communications did not have to be reasonable, but could reflect bias and be uninformed or unreasonable, as long as they were not deliberate lies. Regardless, employers must still be careful to ensure that any comments that they can say are said in circumstances that are not coercive or threatening.

**(i) What employers can say to employees:**

- Employers can tell employees their views on trade unions, including any negative views, as long as those views are not coercive or intimidating or deliberate lies.
- Employers can tell employees how an application for certification by the trade union to the Board will be decided.
- Employers can tell employees that joining a trade union is their own decision, that it is an important decision and that no one has the right to coerce, threaten or intimidate them.
- Employers can tell employees that it cannot advise them about their obligations and that they should ask for a copy of the trade union constitution in order to understand the trade union’s rules, disciplinary powers and membership dues requirements.
- Employers can tell employees that they can choose whether or not to talk to trade union organizers.
- Employers can explain existing Company policy on wages, promotion, layoffs and other matters.
- Employers can advise employees of their freedom of choice to join or not to join a trade union and that they do not have to sign membership cards to maintain their current employment.
- Employers can tell employees that there will be no automatic increase in wages or benefits just because a trade union is certified to represent employees.
- Employers can explain how bargaining works and that both sides would be required to bargain in good faith but good faith bargaining does not require either party to agree to all the other’s demands.

- Employers should listen to employees concerns or grievances but not make any immediate promises.

**(ii) What employers cannot say to employees:**

- Cannot threaten a loss of jobs if a trade union becomes certified.
- Cannot make promises to employees conditional upon the outcome of the trade union's organizing effort.
- Cannot threaten employees with the loss of fringe benefits or a reduction in wages.
- Cannot tell employees that the Company will refuse to bargain with the trade union if it is certified.
- Cannot ask employees to wear "pro Company" or "anti-trade union" insignia.
- Cannot allow anti-trade union or pro-union employees to use the company facilities such as fax machines or e-mail for campaign purposes.
- Cannot suggest to employees that they ask the trade union to return, or otherwise suggest that they revoke, their trade union cards.
- Cannot tell employees not to sign a membership card, or that not signing a membership card is an expression of confidence in the Company.
- Cannot ask employees whether they or other employees have signed trade union membership cards.
- Cannot cause or encourage rumours that management knows who has signed trade union membership cards.
- Cannot treat anti-trade union employees more favourably than pro-trade union employees.
- Cannot treat employees who are sympathetic to a trade union any differently from other employees with respect to work assignments, overtime, discipline or other matters.

## IV. THE IMMEDIATE IMPACT OF CERTIFICATION IN THE WORKPLACE

### (a) New Duties Imposed on Employer

As soon as a union is certified, a host of new duties are imposed upon the employer. Some of the more significant considerations are set out below.

#### (i) Freeze on Discipline / Termination

Section 45 of the *Code* prevents an employer from terminating or disciplining an employee within four months of certification or until a collective agreement is reached. The purpose for this provision is to balance the right of employees to join or participate in lawful union activities and management's right to manage the business. The four month statutory freeze period has been found necessary because of the potential for abuse during the sensitive periods of certification and collective bargaining.

Subsection 45(4) of the *Code* however, allows an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for "proper cause". In this context, "proper cause" is not the same as the concept of "just cause". An employer may consider in its decision to terminate 'valid and reasonable' economic reasons, but can be called upon to establish at the Board that the economic reasons were valid.

The Board has held that an employer must establish some "reasonable relationship" between the alleged employee misconduct and the employer response. The test is whether the employer can advance a reasonable explanation which objectively demonstrates a rational connection between the alleged misconduct and the discipline which was imposed. An employer must go further than establishing there was "some cause" for the imposition of discipline. The Board must be satisfied that there was "proper cause". The Board will go beyond looking at the incident that directly led to discipline. The Board will review the steps taken by the employer to investigate the incident, the relevant factors taken into account by the employer and the rationale for the penalty chosen. This can require an examination of the nature of the employer's operation and manner in which similar circumstances have been addressed previously by the employer. The employer must show that it acted in a bona fide manner and that it was not influenced by extraneous or improper factors. The Board will also consider the employee's involvement in the union, the employer's knowledge of the union of the employee's activity and whether or not the employer gave the employee an opportunity to explain the circumstances behind the conduct.

The test is not the same as the "just cause" requirement in the *Code*. The Board will show greater deference to the employer's decision than would an arbitrator. If there has been a serious breach of the employment relationship, the Board will not likely interfere with the employer's decision. The Board will not substitute its own personal view for that of the employer except in situations such as those where a persuasive mitigating factor was not considered or the penalty was out of proportion to the misconduct. The Board will still examine discharge cases closely because of the significant consequence to the employee, as well as broader implications for effective collective bargaining.

Of course, if anti-union animus is any part of the employer's motivation, the discharge will be found to be unlawful.

For instance, an employer who dismissed its entire catering division after certification was held to have breached the provisions of the prior *Industrial Relations Act*, even though it had valid economic reasons for contracting out the catering work, it did not need to do so during the freeze period: *Cheni Gold Mines Inc. and International Union of Operating Engineers Local No. 115 and Tunnel and Rock Workers Union, Local No. 168* (May 10, 1989, No. C105/89). However, in that same case, the employer was found to be within its rights to dismiss an employee in the catering division who had consumed the employer's alcohol on the job.

The Board has sent a clear message that, if an employer wishes to make a change during the freeze period, it should have the matter adjudicated before proceeding with the implementation of its plans: see *Cheni Gold Mines*, above. In fact, in one case where an employer had laid off employees and sold or moved equipment to its US operations, the Board found that, had the employer made an application pursuant to (now) section 45, it would likely not have been in breach, although some conditions may have been attached. Despite the fact that the layoffs and sale of equipment were for valid business reasons, the company's failure to seek prior approval was fatal to its argument.

## **(ii) Freeze on Other Changes**

Section 45 of the *Code* provides that once a union is certified, the employer must not increase or decrease the rate of pay of an employee in the bargaining unit, or alter another term or condition of employment for a period of 4 months, or until a collective agreement is executed, whichever occurs first.

There is discretion in section 45 for the Board to authorize a change upon an application by the employer, with whatever conditions the Board sees fit to impose.

The Board has stated that section 45 will be given a fair, large and liberal interpretation, to provide a period of calm following certification and to facilitate the beginning of collective bargaining. This obligation is often described as creating a "level playing field" for bargaining. This is premised on the concern that employers may try to "punish" employees who form a union by changing terms and conditions of employment, or at least to "chill" bargaining and undermine the union. This issue often arises in respect of planned or annual wage increases that come up shortly after a certification. The concern can arise with both the importance of increases and the denial of increases in wages.

The general rule of thumb is that the employer must adopt a 'business as before' policy. An employer may be required to implement regularly-scheduled wage increases after certification, even though the employer is about to enter collective agreement negotiations over all issues including wages. However, if wage increases (such as 'cost of living allowances') are at the sole discretion of the employer, and none have been announced for the freeze period, the employer need not implement them: *Redwood Plastics Corp and CAIMAW Local 1 (B.C.)*, BCLRB No. C98/90, Appeal dismissed BCLRB No. 165/90. It has also been held that, under some circumstances, an employer must implement a "new" wage increase plan for the bargaining unit during the freeze period, if the employer is implementing such a plan in its other

places of business. The point is that there must be no implied “message that the Union is responsible for decreasing a raise”: *Rogers Cablesystems Ltd. (Re)*, BCLRB Letter Decision No. B283/97. The Board is particularly sensitive to situations where the employer gives the increase to non-union employees but withholds it for union employees.

As with discipline during the freeze period, an employer may cite an economic rationale for any changes, but if part of the reason for changes is an ‘anti-union’ animus, this defence will be unsuccessful. Some changes that have run afoul of section 45 include:

- changes to lunch breaks or smoke breaks: *Ventur Steel (1990) Ltd.* and *United Steelworkers of America, Local 8637* (BCLRB No. B310/96);
- a refusal by the employer to implement discretionary performance bonus programs used in its other, non-union locations: *The Canada Trust Company* and *B.C.G.E.U.* (BCLRB No. B173/97); and
- a change to the manner in which tips were calculated: *Isadore’s Cooperative Restaurant*, (BCIRC No. C119/87).

### **(iii) Exclusive Bargaining Agency**

The *Code* stipulates that, once certified, the union becomes the exclusive bargaining agent for its member employees (s. 27). This means that the employer must deal directly with the union on matters which may be subject to collective agreement negotiation.

### **(iv) Duty to Bargain in Good Faith**

Sections 11 and 47 of the *Code* require that the employer and the union must not fail or refuse to bargain in good faith, and make every reasonable effort to conclude a collective agreement. This does not require that the parties agree, only that they make good-faith and reasonable efforts to agree.

When addressing allegations of ‘bad faith bargaining’, the Board will examine the facts to see if both sides had a “subjective intention” to reach an agreement. Because of this potential for review, the parties must not only bargain in good faith, *they must be seen to do so*. The Board will be looking for signs that either party, while paying lip service to “hard bargaining”, are in fact only going through the motions, participating in what is called “surface bargaining” while in fact entertaining no desire to successfully conclude an agreement. Some examples of “bad faith” bargaining have included:

- attempting to bargain with employees individually
- employer making illegal proposals or unlawful business closures
- failing to disclose relevant information, such as an intention to sell or move part of the business, or steps the employer had taken to terminate a pension plan

- sending uninformed negotiators to the bargaining table
- participating in conduct destructive of the collective bargaining atmosphere
- renegeing on previous proposals or agreements
- otherwise delaying excessively

**(v) Restrictions on Communications with Employees**

Sections 8 and 9 of the *Code* give employers the freedom to express their opinions provided that they do not use undue influence, intimidation, coercion, or threats to prevent individuals from exercising their rights under the *Code*.

The Board will review on a case-by-case basis the content and the context of the communication to determine whether it constitutes “undue influence” or is otherwise improper. An employer must be extremely careful in what it says to employees about the union, the bargaining process, and even about the business itself. Timing is also critical; a statement made at the beginning of the negotiating process may be perfectly fine, but repeating the same statement in the heat of a lockout or strike can run afoul of the *Code*. Some factors considered are:

**Accuracy:** Is the communication “a matter of opinion reasonably held” by the employer?

**Rhetoric:** A communication will more likely be approved if it does not include undue rhetoric, particularly anti-union positions.

**Intent:** Was the communication made in a deliberate way to apply pressure on the employees, or was it instead simply information dissemination?

**Bypassing union:** Was the communication an offer or position that was first communicated to the union as the exclusive bargaining agent of the employees, or is the employer bypassing the union?

**Undermining union:** If the employer’s communication is aimed at undermining, demeaning, or discrediting the union, it will likely to be regarded as breaching the duty of the employer to bargain in good faith.

**Implied threats:** For example, communications discussing the possibility of closure, issued shortly after certification, may be viewed as an implied threat.

## **(b) Rules Regarding Unfair Labour Practices**

It is important to remember that all the rules and principles regarding unfair labour practices that were in force before certification will continue to apply after certification and after the four month freeze period expires.

## **V. THE LONG-TERM PICTURE**

### **(a) Collective Bargaining**

After certification, the union or the employer may give notice to the other side to begin collective bargaining. Section 47 of the *Code* requires that the parties must begin to commence bargaining in good faith within 10 days after notice is given.

Forming a negotiating team is the first step in the collective bargaining process. The team must have people who can perform the following functions:

- Financial analyst
- Minute-takers (to preserve negotiating history)
- Expert on the industry (must have real world knowledge about the day to day functioning of the bargaining unit)
- Chief Spokesman (both to articulate one side's position, as well as to control the flow of the team)
- Decision Maker (the team must contain someone with bottom-line authority to decide)

All members of the team will ideally possess the attributes of mental flexibility, mental discipline, both mental *and* physical stamina, good 'people skills' and, last but not least, a sense of humour.

The key to success in collective bargaining is preparation. Members of a negotiating team must have experience in and up-to-date knowledge of:

- labour law
- human rights legislation
- arbitration law

The last of these is particularly important, and often overlooked. Arbitrators have attached special meaning or obligations to certain clauses. If such a clause is proposed by the other side, someone on the team must know how it will be interpreted and the potential effects it may have before agreeing to it.

A negotiation team should, prior to the commencement of the bargaining:

- identify the objectives to be sought in the negotiations both short and long term
- anticipate the demands of the other side and the problems likely to be encountered
- develop tentative responses
- discuss strategically the timing of the negotiations
- identify strengths and weaknesses of both sides
- consider a communications strategy
- identify any PR or media issues, and decide who will handle them
- create an agenda

**(b) First Contract Imposition**

If negotiations fail to arrive at a successful first collective agreement, and if a union strike vote has been successful under section 60 of the *Code*, then either party may seek to have the Board impose a collective agreement through a mediation process. This process, described in section 55 of the *Code*, can result in the imposition of a collective agreement with which neither side is happy.

If a party applies and the situation meets these criteria, a mediator will be appointed. The appointment of a mediator suspends the rights of the parties to strike or lock out.

The mediator has 20 days in which to produce an agreement. Should that fail, the mediator makes recommendations to the associate chair at the Board; the associate chair decides whether more mediation or arbitration is required, or whether a strike or lockout is called for. After a further 20 days, the Board has the power to direct a method of resolution.

The mediator will often issue recommendations for settlement. The Board has a strong preference to follow the mediator's recommendations where it imposes a first collective agreement.

The power to impose a collective agreement under section 55 has been applied sparingly. The Board recognizes that negotiated settlements have more legitimacy between the parties and a better chance of resulting in a long-term relationship. Imposed agreements are seen as a last resort. The Board has even allowed parties to resort to economic weapons (in one case an 8-month strike) before implementing a contract.

This remedy is used to prevent the irreparable break down of the relationship. Thus, the Board will try to intervene prior to the complete failure of bargaining. In determining whether to impose an agreement, the Board will consider the following:

- any bad faith or surface bargaining;
- conduct of the employer that shows a refusal to recognize the union;
- the adoption of any uncompromising position by either party;
- failure to make reasonable efforts;
- unrealistic demands or expectations that are either intentional or the result of inexperience;
- whether there is a bitter protracted dispute that is unlikely to be solved by the parties.

### **(c) Strikes and Lockouts**

The final weapon in the arsenal of the parties is the threat of a strike or a lockout. Both sides bargain from positions of relative strength or weakness based on who could best survive a work stoppage, and for how long. From the employer's perspective, it is imperative that it has an accurate picture of how a strike or lockout will affect its business. This requires a thorough knowledge of:

- picketing laws
- restrictions on the use of replacement workers
- the potential impact on the employer's "allies"
- "hot" declarations and boycotts, and their potential effect
- the intentions, loyalties and attitudes of non-striking workers
- the terms of other material collective agreements, particularly provisions regarding crossing picket lines

**(d) Economic Weapons**

**(i) Picketing**

A union is entitled to picket the place of operations or business of the employer where they normally carry on the bargaining unit work. They are not permitted to picket any other location or place of operation of the employer so long as bargaining unit work is not performed at those locations. An employer who moves bargaining unit work to another location during a dispute would be subject to picketing at that other location.

The Board has authority to relieve innocent third parties against picketing at common sites (i.e. a site share with a struck employer). The Board will either regulate or restrict the picketing. Third parties who assist a struck employer in resisting a strike or furthering a lock out may become subject to picketing. The intention of the third party to assist the struck employer is not determinative but the Board will consider whether the third party is engaged in self help in its conduct.

**(ii) Replacement Workers**

Prior to 1993, there was nothing in the *Code* which prohibited the use of replacement workers. Their use is now prohibited through the operation of section 68 of the *Code*. The *Code* defines replacement workers as those who perform the work of striking or locked-out employees and who were either:

- hired or engaged after the notice to commence collective bargaining was delivered (or after bargaining began, if that was earlier); or
- transferred to the struck or locked-out location or supplied by another person and who were transferred after the notice to commence bargaining was given (or after bargaining began, if that was earlier).

These provisions apply to managers as well. For instance, if a manager is hired after notice to bargain was given, but was hired to replace a manager who had resigned, that new manager is forbidden from performing 'struck work', even though the manager he replaces would not have been. This can be a significant issue given the narrow scope of exclusions and the often extensive time period between notice to bargain and any dispute. The law also catches 'indirect replacement workers', in that if a manager is legitimately doing the work of a striking worker, the employer cannot replace that manager.

An employer is also forbidden from using volunteer workers to do struck work, and any non-striking employee is free to refuse to do the work of a striking worker without fear of retribution.

**(iii) Hot Edicts and Consumer Boycotts**

Hot edicts, which result in actions by other unions against the employer, are currently legal, provided that they satisfy the requirements of section 70 of the *Code*.

If a hot edict is “substantially affecting trade and commerce in a commodity or service or substantially affecting the business” of the employer, the Board may issue a declaration restricting or nullifying the edict. However, the section goes on to require the Board to consider the broad objects of Part 5 of the Code, including “the necessity for reasonable protection and advancement of a trade union or employer” in deciding whether to intervene. A hot edict is permissible in furtherance of a strike or lock out.

Perhaps the fullest explanation of the law regarding ‘hot edicts’ is found in *Pacific Press Ltd. v. Vancouver-New Westminster Newspaper Guild, Local 115* (1987) 14 B.C.L.R. (2d) 298. In that case, Famous Players theatres was engaged in a dispute with its employees. The B.C. Federation of Labour declared Famous Players “hot”, which meant that unionized workers at Pacific Press refused to place ads for the movies in its newspapers. The Board allowed the hot edict to stand, and the B.C. Supreme Court declined to overrule the Board. Even though Mr. Justice Bouck found the ‘hot edict’ to be unlawful under the Code, he held that the Board’s error was not ‘patently unreasonable’ under administrative law.

Consumer boycotts are another valid economic weapon used by unions to further its own ends and gain an advantage over the employer in a labour dispute. For instance, a union can place advertising encouraging people not to patronise a business during a labour dispute. Unions will also use ‘leafletting’, ‘information stations’, or other activities to exert pressure on an employer.

#### **(e) Grace Period Following Certification**

A newly certified union enjoys a ‘grace period’, within which it cannot be decertified or ‘raided’. This grace period generally lasts 10 months from certification in the case of decertification (s. 33(3)), and six months in the case of raiding by another union (s.18(2)).