Bill C-525 Employees' Voting Rights Act

Submission to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)

Submission by Unifor
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Introduction

Unifor is Canada's largest private sector union, with more than 300,000 members across the country, working in every major sector of the Canadian economy.

Unifor represents tens of thousands of employees covered by the *Canada Labour Code* including employees in transportation, telecommunications and media. In the federal public sector, Unifor represents employees governed by the *Public Service Labour Relations Act* (Coast Guard radio operations employees (Local 2182), Transport Canada air traffic control employees (Local 5454) and Treasury Board printing employees (Local 588G)). Unifor also represents House of Commons broadcasting and technical employees who are governed by the *Parliamentary Employees Staff Relations Act* (Local 87M).

Unifor brings a modern approach to unionism: adopting new tools, involving and engaging our members, and always looking for new ways to develop the role and approach of our union to meet the demands of the 21st century.

Summary

Unifor opposes Bill C-525.

Bill C-525 is not about employee democracy as its title suggests. It is about eroding the ability of employees in Canada to contribute to the decisions that affect their lives by choosing to participate in collective bargaining.

The Bill would place unreasonable obstacles in the way of union organizing, making it more difficult for a group of employees in a workplace to make a democratic choice to be represented by a union.

The Bill would make it more difficult for unions to maintain existing bargaining rights, leading to more instability in workplace relationships.

Bill C-525 is an example of misguided ideological meddling in a balanced labour relations system that generally works well for employers, trade unions, employees and the general public. It does so in a way that previous expert advisors have warned is ill-advised and dangerous.

The Bill makes changes that no labour relations stakeholders appear to have requested, save possibly for anti-union groups like Merit Canada that have lobbied the Government extensively to enact laws to impair the ability of unions to participate as equal workplace parties.

Scope of Bill C-525

The general scope of Bill C-525 is summarized in the printed copy of the bill. It says that it amends three laws "to provide that the certification and decertification of a bargaining agent under these Acts must be achieved by a secret ballot vote-based majority".

Bill C-525 would do more than that.

It would make it harder for employees to democratically elect to participate in the governance of their workplace through the institution of collective bargaining.

It would make it easier for employees to obtain a revocation of a union's bargaining rights.

It would make it harder for unions to win all representation votes.

Unifor will focus in this submission on the proposed changes to the *Canada Labour Code*. The comments about the proposed changes to the *Code* should be taken as comments also about the changes that are made to the other two statutes.

Bill C-525 and its sponsor

One of the more objectionable changes that Bill C-525 would make to the *Canada Labour Code* and the two other statutes is to alter the level of support that unions would have to obtain in order to acquire or maintain the right to represent employees in a workplace bargaining unit. Unions would have to obtain majority support of the whole population of voters in a representation vote, and not just a majority of those who participate in the vote.

Unifor notes that the author of Bill C-525 is Alberta Member of Parliament Blaine Calkins, the Member for Wetaskiwin, which is south of Edmonton.

Mr. Calkins was re-elected for the third time in 2011 with 81.5% of the votes that were cast by electors in his constituency. However, taking into account the voter turnout, Mr. Calkins received the support of just 47% of the electors in Wetaskiwin.

In fact no Member of Parliament was elected in 2011 with the support of more than 50% of the electors in their riding. We note that if the standard that Mr. Calkins would apply to union organizing were applied to the 2011 general election, the House of Commons would be completely empty. No Member would have been elected.

When he introduced his private member's bill on June 5, 2013, Calkins said:

> "Bill C-525 would provide necessary amendments to the certification and decertification of a bargaining agent by way of a mandatory secret ballot vote based on a majority.
>
> For far too long the federal legislation has lagged behind that of our provincial counterparts, and workers deserve the right to have a secret ballot vote to decide who represents them at the bargaining table".
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> Source:http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=263&Parl=41&Ses=1&Language=E&Mode=1#SOB-8058239

It is not correct to suggest that the current system permits a union to represent a group of employees on the basis of anything other than majority support, measured in a fair way.

It is also not correct to suggest that the federal sector has lagged behind provincial jurisdictions in moving toward a vote-based system of determining the right of unions to represent bargaining units of employees.

How to make good labour laws

Good laws are the product of careful study and review. This is especially important in the case of collective bargaining laws.

In the case of collective bargaining legislation, it is particularly important to ensure that changes are based on thorough research and, ideally, consensus.

In 1973 for example, significant changes to existing collective bargaining laws followed extensive study and review by the Woods Task Force in the late 1960s.

In 1998 as well, the collective bargaining parts of the *Canada Labour Code* were amended in a significant way following careful study by a task force which consulted widely with labour and management. The "Sims Task Force" reported its findings to the Minister of Labour in 1996[1]. The consultations carried out by that task force produced widespread concern about excessive experimentation in labour relations legislation. One of the concerns was that "undue politicization of our labour laws" introduced an element of political confrontation into collective bargaining relationships which undermines the ability of workplace parties to communicate frankly and directly with each other (*Seeking a Balance*, p. 39).

[1] Sims, Andrew C.L., *Seeking a Balance*, *Canada Labour Code Part 1 Review* (Ottawa, 1995).

In consideration of those and other concerns, the Sims Task Force adopted a number of premises on which its recommendations were based. Those premises included the need for consensus between the parties (i.e. labour and employers) as the best basis for advocating change (*Seeking a Balance*, p. 40). Any reform therefore would be required to be based on criteria that included the existence of consensus (*Seeking a Balance*, p. 41).

Unifor is not aware of any impartial study or review of the Code and other labour relations statutes that has recommended the kinds of changes contained in Bill C-525. Indeed, the Bill is not supported by any such independent advice.

Review of certification and revocation procedures in Canada

Certification is the usual process by which a union obtains exclusive bargaining rights for a bargaining unit of employees. In all cases, a union must establish that it has majority support of those employees.

Certification procedures in Canadian labour law jurisdictions usually prefer either card-based applications or mandatory votes. Often, the two methods are available concurrently in a jurisdiction under different circumstances.

Decertification or revocation is when the bargaining rights of a union are revoked by a labour board. In the *Canada Labour Code*, it is called revocation of bargaining rights. Revocation is used in this submission.

Existing Canada Labour Code

In the case of certification, a union may apply to be certified based on membership evidence in the form of signed membership cards. Each employee who signs a card must also pay $5.00 as a sign of their serious commitment to the union's application.

If the application is supported by cards signed by between 35% and 50% of the employees in the proposed bargaining unit, the CIRB will generally order a vote.

If the application is supported by cards signed by more than 50% of employees in the bargaining unit, the CIRB will generally certify the union as bargaining agent. The union then has the right to require the employer to bargain to make a collective agreement.

The CIRB retains discretion to order a vote in all cases, for example if there is any doubt about the reliability of the union's membership evidence.

The result of a representation vote is based on a majority of those who vote but the vote result will be disregarded if less than 35% of employees participate (s. 31).

An employee may apply for revocation of a union's bargaining rights (s. 38). The application must be supported by evidence (usually in the form of a petition) showing that a majority of employees in the bargaining unit no longer wish to be represented by the union. If the petition suggests that a majority of employees are opposed to the continuation of the union's bargaining rights, the CIRB conducts a representation vote and a majority of the ballots cast determines the result.

Provinces with card-based certification procedures

Contrary to the statements by Mr. Calkins at First Reading of his private member's bill, half of Canadian provinces use card-based applications to decide certification applications.

In **Newfoundland** and **Manitoba**, an application for certification may be granted on membership cards alone if the union has the support of more than 65% of employees in the bargaining unit. A representation vote is required if membership evidence demonstrates between 40% and 65% support.

New Brunswick has similar rules, but the threshold between card-based certification and the requirement of a vote is 60% support for the union.

Prince Edward Island and **Quebec** are the same as the federal sector. They require a representation vote if union support at the time of a certification application is between 35% and 50%. The union may be certified without a vote based on evidence of union support greater than 50%.

Provinces with vote-based procedures

Alberta's *Labour Relations Code* requires a vote in all certification applications. 40% support of the union is required to get a vote.

British Columbia's *Labour Relations Code* requires a vote in all applications. 45% support of the applicant union is required to get a vote.

Saskatchewan's *Trade Union Act* requires a vote in all applications. 45% support of the applicant union is required to get a vote.

Ontario's *Labour Relations Act, 1995* has since 1995 required a vote in all applications except in the construction industry where a union may opt instead to apply on the basis of membership evidence only. 40% support of the applicant union is required to get a vote in Ontario. Votes are required to be conducted within five working days of an application.

Nova Scotia's *Trade Union Act* requires a vote in all applications. 40% support of the applicant union is required to get a vote. Nova Scotia has always required a vote, and has always required that votes be conducted very soon after an application in order to minimize protracted campaigns about the application.

In **all Canadian jurisdictions where vote is required**, the application succeeds if more than 50% of ballots are cast in favour of the union's application. As noted above, a vote in the federal jurisdiction must be set aside if fewer than 35% of eligible employees participated in the vote (*Canada Labour Code*, s. 31(2)). In Saskatchewan, a majority of employees must participate in a vote for it to be valid.

Bill C-525 and Certification Applications

Bill C-525 would make it harder for employees to organize and to choose to be represented by a union at work.

An application for certification would now require a two-step process. It would require a union to first solicit support sufficient for an application and then it would require the CIRB to hold a representation vote in every application. In that second step employers would have an opportunity actively to campaign against the union.

A union would have to file membership evidence for 45% of the employees in a bargaining unit to get a mandatory vote. Now, a union can get an optional vote with membership evidence from 35% to 50% of the bargaining unit. A union is usually certified if the membership evidence reveals support amongst a majority of the whole bargaining unit population.

Card-based applications for certification are reliable and efficient

The main advantage of a card-based application is that it permits employees to discuss and decide to be represented by a union without being unduly affected by the employer's influence. Employees can take the time to make a careful, informed decision. Employees are not exposed to an active "election" campaign in which the employer opposes the union's application.

In contrast, a representation vote provides an employer with an opportunity to campaign against the union's application. Once they know about the application, employers may use their influence to dissuade employees from voting for the union. Many opportunities arise for disputes about employer interference.

Card-based applications are reliable. The CIRB carefully checks membership cards and investigates irregularities. The CIRB can dismiss an application if there are irregularities in the membership cards.

Card-based applications can be processed and decided efficiently by labour boards. The CIRB processes most applications that do not require a vote in less than 50 days, but a miniscule number of applications requiring a vote are disposed of in the same period.[2]

[2] Canada Industrial Relations Board, *Board Performance: Certification Applications Since April 1, 2005* (accessed: http://www.cirb-ccri.gc.ca/eic/site/047.nsf/eng/00311.html). Between 2005 and September 2013, 56% of applications (468 matters) not requiring a vote were dealt with within 50 days and 373

For example, in September 2013, Unifor applied to represent 60 employees of Nasittuq Corporation at Canadian Forces Station Alert on Ellesmere Island. A vote was not required because the membership cards demonstrated majority support for Unifor. No employee complained that the union's membership evidence was not reliable. The Board completed processing of the application and granted certification in approximately two months. If a vote had been required, the application would undoubtedly have taken more time to complete. The CIRB would have faced the administrative challenge of arranging a vote at Alert.

Expert advisors have recommended against mandatory votes in every application for certification

One of the items that the Sims Task Force studied in 1996 was a proposal by some employers to move to a vote-based certification scheme because they did not "trust" the result of card-based applications for certification. The Task Force rejected that concern. It said that the card-based scheme is not unreliable. It is an effective way of gauging employee wishes. It measures a union's support amongst the whole population of employees in a bargaining unit, not just those who vote (*Seeking a Balance*, p. 61-62):

> "We are not convinced that the statute should make representation votes mandatory. The card-based system has proven to be an effective way of gauging employee wishes and we are not persuaded that it is unsound or inherently unconvincing to employers. It requires a majority of all workers, not just those who vote. It reduces the opportunities for inappropriate employer interference with the employees' choice. Setting up an effective polling system to fit all cases in the federal sector would be difficult …."

The Sims Task Force recommended that processes for determining certification applications be improved so that they would be determined more quickly. The Canada Labour Relations Board responded by implementing new rules and processes. It now deals with representation applications quickly and efficiently.

The Sims Task Force noted that the provinces which at that time had adopted vote-based systems required that votes be conducted quickly, in a matter of days, to avoid employer unfair labour practices and prolonged disruptive campaigns. The Task Force emphasized the difficulty that would be encountered in having votes in every case in the federal sector in which bargaining units often are multi-location, national in scope or remote.
It is not difficult to see how impractical a requirement of mandatory votes would be in the federal sector in certification applications concerning bargaining units that are national in scope, with multiple and possibly remote workplaces.

There simply is no evidence to suggest that a vote-based scheme is necessary in the federal sector. It would be more expensive and administratively burdensome for the CIRB, and would create delays in the

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required more than 50 days. Only 3% (4 matters) requiring a vote were dealt with in less than 50 days and 134 such matters required more than 50 days)

final determination of applications. It would not contribute to more fair outcomes. It would increase the opportunity for employer unfair labour practices.

Bill C-525 appears to preclude alternative voting methods

The CIRB has in recent years developed experience in the use of alternative voting methods such as mail, internet and telephone voting. Such methods are now used with some regularity when votes are required in displacement applications for certification in which the vote is between two competing unions. Alternative voting methods often are used as well in cases where a choice of unions arises in the context of workplace reorganization such as a sale of business. While reliable, such alternative voting methods are administratively burdensome for the Board. They often cannot be done very quickly. They require the collection of detailed contact information from the employer, distribution of voting instructions by mail, reconciliation and correction of bad contact information, collection of vote results, etc.

Unifor notes that that Bill C-525 would appear to preclude the possible use by the CIRB of anything other than a paper ballot, cast in the traditional way, in a vote conducted in the workplace. Section 3 of the Bill would amend section 29(1) of the *Code* to require a "secret ballot representation vote". The Code at present permits the CIRB to conduct a "representation vote". While all votes conducted by the CIRB are secret, the addition of the words "secret ballot" suggests that alternative voting methods would not be permitted.

Bill C-525 would impose an unreasonable requirement for unions to win a representation vote

Bill C-525 and would make it harder for unions to win a representation vote. Section 2 of the Bill would add a requirement that a union would win a vote only if a majority of employees in the bargaining unit vote in favour of the union. Now, a union wins the vote if a majority of voters vote in favour of the union.

A non-voting employee would be presumed to oppose the union's application and to oppose the union's acquisition of bargaining rights.

Bill C-525 would mean that the union always loses if there is a low voter turnout. Employers could defeat an application by dissuading employees from voting, or interfering with employees when they attempt to vote. Employers could delay applications with endless disputes about whether some individuals should be eligible to vote or not.

In no other jurisdiction in Canada does the law measure a representation vote against the whole population of the bargaining unit. Ontario is typical. The union wins if a majority of the ballots cast are cast in favour of the trade union (*Labour Relations Act, 1995*, s. 10(1)).

Mr. Calkins might say that under the current voting system, a non-voter counts as a "yes" for the union so that a union can get certified with little or no support. However, labour boards ensure that all employees have notice of a vote, and a fair opportunity to participate in the vote.

As in every democratic system, non-voters don't count for one side or the other. They just don't count. The 53% of voters in Wetaskiwin who did not vote for Mr. Calkins in 2011 were not votes that counted for another party. They just didn't count.

Finally, it must be remembered that the concern that unions might gain representation rights based on little or no support is addressed in the existing system. Most certification applications are determined just on the basis of membership cards filed with the application. Union support in that case is measured amongst the whole population in the bargaining unit.

Bill C-525 and Revocation Applications

Bill C-525 would make it easier for employees to apply for a revocation vote and harder for a union to survive such a vote.

An employee could apply for a revocation vote if the employee claims to represent only 45% of employees in the bargaining unit. Now, the CIRB will order a representation vote only if an employee can demonstrate that at least 50% of employees want the union's bargaining rights to be revoked. If the CIRB conducts a vote in a revocation case, it determines the result based on the majority of those who vote.

The main purpose of Bill C-525, which is to reduce the ability of unions to obtain and maintain bargaining rights, is revealed by the fact that section 5 of the Bill would enact a new section 39 of the Code to require that the union must obtain majority support of the whole bargaining unit population in order for the revocation application to be dismissed. In contrast to the way in which a non-voting employee would be deemed to oppose a union's certification application, a non-voting employee would be deemed to support a revocation application and support the loss of the union's bargaining rights – exactly the opposite effect of a non-voter in a certification application.

Bill C-525 therefore would make it harder for unions to alter the *status quo* in an unrepresented workplace by requiring that a majority of employees in a bargaining unit support a union's application to become their bargaining agent. At the same time, the Bill would make it harder for unions to maintain the *status quo* in a unionized workplace by requiring that a majority of employees in a bargaining unit must oppose the revocation application.

As with certification votes, Bill C-525 would mean that unions would lose when the voter turnout is low, where employers pressure employees not to vote or where employers prevent them from voting.

Conclusion

Unifor opposes Bill C-525.

While called the *Employees' Voting Rights Act*, it is not in fact about improving the ability of employees to democratically choose to be represented in collective bargaining by a trade union. It does the very opposite. It makes it harder for employees to choose to be represented by a union at work, and it makes it harder for unions to maintain their existing bargaining rights.

Unifor reminds the Committee and the House of the Preamble to Part I of the Code:

> **Preamble**
>
> WHEREAS there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes;
>
> AND WHEREAS Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;
>
> AND WHEREAS the Government of Canada has ratified Convention No. 87 of the International Labour Organization concerning Freedom of Association and Protection of the Right to Organize and has assumed international reporting responsibilities in this regard;
>
> AND WHEREAS the Parliament of Canada desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all;

It remains the underlying policy of the *Canada Labour Code* that collective bargaining is a good thing. It serves the public interest. The Code recognizes collective bargaining as a necessary institution for the constructive settlement of disputes.

For employees, the freedom of association referred to in the Preamble to Part I requires that unreasonable obstacles to the determination of majority choice about union representation not be erected.

Bill C-525 ought to be rejected by the Committee and the House. If there is a desire to assess the continued suitability of existing labour relations legislation, a careful and balanced review ought to be undertaken to identify possible changes.

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