



Health Care Labor Report

Labor activity, trends & events

April 2009

Canadian Experience: Expedited Elections

“It’s time we had a President... who strengthens our unions by letting them do what they do best: organize our workers... I will make is [EFCA] the law of the land when I am President.” – Barack Obama speech to the AFL-CIO, April 2, 2008.

By John Mortimer

With that one comment, President Obama unintentionally summarized both the purpose and the problem associated with the *Employee Free Choice Act* (EFCA). Its purpose is to strengthen America’s unions and allow them to organize workers with as few hindrances as possible – and that’s also its problem. Nothing in the proposed legislation speaks to making union representation more effective and accountable to unionized employees, let alone ensuring workers and employers are more effective if unionized.

We’ve witnessed this in Canada for decades. Some of the changes proposed by EFCA have long been a part of Canadian labour law. In our experience, such measures make it more likely that union organizing will succeed. They benefit union leaders and the employees who support them at the expense of employers and employees who prefer to work directly together to resolve workplace issues. As the U.S. considers “Canadianizing” American labour law, it’s valuable for those associated with labour relations and human resources to understand what may lie ahead.

To the great frustration of union leaders, support for EFCA in its original form appears to be fading. Some senators who supported EFCA in the previous congressional session are not lending their support, at least for now, over concerns about the card check provision, which eliminates secret ballot votes on union recognition. Obviously, the optics aren’t good for some politicians to back a bill that essentially does away with democracy in the workplace, let alone in a time of economic turmoil. But they may be willing to pass EFCA if amendments are made to the card check component. Three big employers, Starbucks, Costco and Whole Foods, recently announced an alternative that suggests trading the controversial card check provision for a voting process known as expedited elections.

Referred to as the “third way” approach, the proposal is promoted as a means of preserving the secret ballot for workers. But Canadians know this isn’t the answer. We have used “quickie” elections for years in five (Ontario, Nova Scotia, Newfoundland & Labrador, Manitoba and British Columbia) of Canada’s 10 provinces. The time frame for expedited elections varies by province, ranging from a minimum of five to a maximum of 10 days after a workplace has received a labour board’s notice that a union has applied to represent workers (see chart).

Province Legislated Election	Timeframe
Ontario	within 5 – 8 days
Nova Scotia	within 5 days
Newfoundland & Labrador	within 5 days
Manitoba	within 7 days
British Columbia	within 10 days

As outlined below, our extensive experience with these elections has made it clear that any perceived advantages come at an unacceptable cost to an employee’s right to make a fully informed decision at the ballot

box, and an employer's right to provide information to his employees so that any decisions made are fully informed.

In the U.S., secret ballot elections are typically held 42 days after the petition is filed with the National Labor Relations Board (NLRB). This gives the employer ample time to state his case to employees, and employees ample time to sort the rhetoric from the facts and make an informed choice on unionization.

But what happens when an election period is just five (or even 10) days? Employees don't have enough time to question union claims, openly debate the issues, hear from employers, clarify the facts or effectively express their concerns to each other. Similarly, employers have a very limited time frame to respond to union claims and provide employees with accurate, balanced information.

If an employer becomes aware of the union drive before the petition is filed, they can begin communications with employees in the pre-election period in an effort to actively challenge the union. Even if the employer isn't aware of the union drive, a 42-day election period still affords a decent amount of time to inform employees and challenge union claims. A "quickie," fiveday campaign does not.

Employers' obvious disadvantage in expedited elections is greatly exacerbated when they also are caught off-guard by a covert union campaign – as commonly happens with expedited elections in Canada. In this situation, the union likely has been talking about/promoting the benefits of unionization to a limited group of employees long before filing a petition with the labour board. But employers may not know a union drive exists until they receive notice of the petition. They then have mere days to find out the issues, communicate their position, respond to questions or concerns from employees, gather the information that employees need, understand the implications of the union submissions and consider all legal aspects of the situation. It is an extremely complex effort (especially in companies with a large workforce), and when it's done under such time constraints, critical mistakes can be made.

Obviously, covert union drives will occur whether the election time frame is five or 42 days. In a 2004 study on Canada, published by Cornell University, Professor Riddell found that "many organizing drives were virtually completed before the employer was aware." But employers who have five days to respond face a very different set of challenges than those who have 42 days to respond – and this fact isn't lost on union organizers. As such, expedited elections encourage and facilitate covert union behaviour that has a negative impact on employers and informed employee choice.

Some U.S. employers decide to be "neutral" during union drives and withhold substantive communication with employees. (This is exceedingly rare in Canada.) But this usually guarantees a union win, and can be a disservice

to employees who deserve to have all the facts before deciding for or against unionization.

While there is no comprehensive published research on expedited elections, most experts agree that unions are most likely to win an expedited election. In the U.S., NLRB statistics show that the unions won 59.9% of representation elections in 2007. If legislation includes expedited elections, the Canadian experience suggests that percentage will increase substantially.

Expedited elections will require that employers be proactive in educating managers and employees and in their communications efforts. If you received a petition for election today, what's your strategy? Do you have a strategy? Could you effectively communicate with all of your affected employees five times in the next five days in multiple venues utilizing multiple communication vehicles? If the answer is "no" or if you aren't sure, then now is the time to begin laying the groundwork. A communications platform that supports a coordinated strategy is essential. Within that framework, empower your supervisors and managers with information and knowledge so that they are adequately prepared to represent the organization's position on remaining union-free adequately to employees. To emerge from an expedited election victorious, you must be prepared to hit the ground running literally at a moment's notice.

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