

Future Victory for Unionized Employers?

The introduction, on November 13, 2003, of Bill 31 which amends section 45 of the Labour Code has led to an outcry within union circles; union confederations are asking that Bill 31 be withdrawn entirely, otherwise there will be “all-out war!”

One wonders what it is that is so alarming about this Bill. Quite simply, the Bill excludes subcontracting from the application of section 45 of the Labour Code—nothing more...

Until now, subcontracting often fell under the scope of section 45 of the Labour Code, because it was considered to be a transfer of part of the operation of an undertaking, with the regrettable consequence that the subcontractor was burdened with the union certification and collective agreement of the former employer. This led to unfortunate situations in which an employer transferred a peripheral activity, such as janitorial services for its premises or waste removal, to a third party and, overnight, the non-unionized third party found itself certified and saddled with a “mega” collective agreement, thereby forcing it into bankruptcy!

Henceforth, if the Bill becomes law, subcontracting (namely the transfer to another employer of functions or a right to operate) will be excluded from the application of section 45 of the Labour Code: neither the certification nor the collective agreement will be transferred. Moreover, if there is truly a transfer of part of the operation of an undertaking, namely a dismemberment of the undertaking, only the certification will be transferred; if the transferor’s collective agreement has not yet expired, it will terminate on the effective date of the transfer and it is the transferee who will negotiate the collective agreement in light of its own economic situation.

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Unions see Bill 31 as a direct attack on their power to unionize and believe that it is intended to reduce the unionization rate in Québec as well as the salaries of workers in the transferred positions. Union propaganda is already well underway, with information being disseminated to union members within the workplace. As a result, the media is already reporting that management’s victory has been highly crippled: collective agreements in Québec will soon contain a provision precluding any subcontracting and employers will have their hands tied even more tightly.

Yet, Bill 31 protects unions and their certification and penalizes transfers of undertakings carried out in order to interfere with union activities. The purpose of the Bill is to bring Québec back into step with the other Canadian provinces—only Québec had such restrictive legislation regarding subcontracting, thereby impeding job creation and economic growth.

The Parliamentary Committee will begin its work on November 24, 2003 and all union and management groups and associations will be heard on this matter. One can only hope that the unions will calm down and that the Legislature will be able to convince them of the merits of Bill 31; otherwise we will undoubtedly be faced with a barrage of general strikes.