

# Research Note

**Bill C-525**

## **Certification/Decertification Process in Federal Jurisdiction**

June 2013



Canadian Labour Congress  
Congrès du travail du Canada

## Research Note

### **Bill C-525 Certification/Decertification Process**

On June 6, 2013, Conservative Party member Blaine Calkins introduced a private member's bill C-525 entitled: "*Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act and the Public Service Labour Relations Act.*" A copy of the Bill can be found here: [http://www.parl.gc.ca/content/hoc/Bills/411/Private/C-525/C-525\\_1/C-525\\_1.PDF](http://www.parl.gc.ca/content/hoc/Bills/411/Private/C-525/C-525_1/C-525_1.PDF)

This Bill makes amendments to the certification and decertification processes of a bargaining agent in the federally regulated jurisdiction, replacing the automatic card check system currently in place with a mandatory secret ballot vote on a majority, once it has been demonstrated that at least 45% of workers want a union.

Blaine Calkins claimed that "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."

The purpose of this research note is to analyze Bill C-525, provide background on the state of the certification/decertification process across Canada, and provide background information on the impact of the Bill on union recognition in the federally regulated jurisdiction and on union density in federal public administration.

#### **The Certification/Decertification Process**

To enjoy the benefits of collective bargaining in Canada, several steps must be passed. To begin, a worker has to be covered by a labour relations law, such as the Canada Labour Code, the *Parliamentary Employment and Staff Relations Act* or the *Public Service Labour Relations Act*. Then, a worker can enjoy the benefits of collective bargaining only if the majority of a group of workers are recognized as part of a collective, a union.

This recognition process, also named the certification/decertification process, is the means by which a group of workers gets an official bargaining certificate for a bargaining unit to become a bargaining agent by the relevant government agency to negotiate on behalf of the represented workers and enjoy the protections provided by the labour relations legislation. Generally speaking, the same principles apply to workers who no longer want to enjoy the benefits of collective bargaining and want to decertify and no longer be represented by a union.

### **Automatic Card Check versus Mandatory Vote**

Union certification/decertification rules vary from province to province. However, there are two main routes to certification/decertification in Canada: by automatic card check or by mandatory vote.

The automatic card check system consists of a process where an automatic recognition of a group of workers representing a bargaining unit has been demonstrated to the relevant government agency with the signature of a union card, and often by paying a mandatory minimum fee (the highest being \$5 for those workers under the Canada Labour Code) by a significant percentage of employees in a selected workplace, and/or for a selected group of employees.

A mandatory voting system consists of an additional step above card check, forcing employees to participate in a mandatory secret ballot vote to demonstrate their willingness to form a union, even if all workers have demonstrated support for the union by signing a card.

In some jurisdictions, the two processes overlap, with card check requiring a mandatory vote when the percentages of union support is lower than required.

Originally, 10 of the 11 jurisdictions in Canada supported a card check certification process (only Nova Scotia has always required a mandatory vote). Over the past three decades, many governments have abandoned card check regimes in favour of mandatory voting.

Today, 5 jurisdictions have enacted the mandatory vote as a certification procedure: British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia. Alberta adopted the vote procedure in 1988, Ontario in 1995. In British Columbia, the card check system was rejected for mandatory vote in 1984, re-integrated in 1992, and then again rejected in favour of mandatory vote in 2002. Newfoundland adopted it in 1994, and reversed it in 2012.

Prior to 2008, Saskatchewan was a card check jurisdiction, allowing certification for workers who clearly supported joining a union by majority. However, the Saskatchewan Party passed Bill 6 (*Trade Union Amendment Act*) requiring the mandatory vote certification process, as well as passing Bill 5 (*Public Service Essential Services Act*), and Bill 80 (*Construction Industry Labour Relations Act*), all severely limiting and attacking workers' rights in the province.

The provinces of Manitoba, Québec, New Brunswick, and Prince Edward Island all allow for card check automatic certification. Newfoundland and Labrador recently joined other provinces allowing card-based recognition when 65% of employees signed a union card.

The fact that some provinces vacillate between card check and mandatory vote over time demonstrates that jurisdictions can recover from these kinds of legislative attacks. For example, Manitoba briefly adopted a mandatory vote process in 1997, but quickly returned to card check in 2000.

### **Bill C-525: From Automatic Card Check to Mandatory Vote**

Bill C-525 proposes to amend the three key pieces of legislation governing certification/decertification for federally regulated employees, who represent about 7% of the workforce in Canada: the Canada Labour Code, the *Parliamentary Employment and Staff Relations Act* and the *Public Service Labour Relations Act*. The changes proposed to the three pieces of legislations are similar in nature.

For example, Bill C-525 amends Section 28, 29, 38 and 39 of the Canada Labour Code. Section 28 and 29 are revised to eliminate the automatic

card check process and replace it by a secret ballot vote as a mean to demonstrate that the majority of workers in a trade union wish to be represented by a bargaining agent.

In the current Section 28 of the Code, a group of employees are recognized as a bargaining agent if they can show that they represent the majority of workers in that unit.

With Bill C-525, Section 28 b) is amended to read that if, on the basis of membership in the trade union that, as of the date of filing of the application, at least 45% of all employees in the unit wish to have a trade union represent them as their bargaining agent, then, if it is the case, Section 29 is amended to make it mandatory for the Board to conduct a vote for the purpose of satisfying itself as to whether the majority of employees in the unit wish to be represented by a bargaining agent.

While these changes look similar to other jurisdictions where mandatory votes are in place, we note that a 45% trigger is the highest found in other jurisdictions. And most importantly, a majority of employees, not the majority of employees who voted in a unit, must be proved, which makes it even more difficult for a unit to get recognition under the legislation. This requires unions to get 50% of all employees to support the union instead of 50% of those who voted.

Section 38 and 39 of the Canada Labour Code are amended to implement the same process in the case of decertification. Section 38 1) and 3) forces a mandatory decertification vote as specified in Section 39, if an employer can show, on the basis of written evidence that, as of the date of filing of the application, that at least 45% of the employees in the bargaining no longer wish to have a bargaining agent to represent them.

But, according to Section 39 b), a union will be decertified if the bargaining agent can not prove that 50% of all employees want to remain in a union. It won't be voted to decertify, but another vote to remain certified where certification will be maintained only if 50% of all employees, not 50% of those who voted, wish to remain represented.

## **The Implications of Bill C-525**

Research shows that mandatory voting hurts the ability of unions to organize workers and reduces certification success when compared to card check certification by increasing the time for certification campaigns and allowing wider reign for employers to interfere with the union drive. Chris Riddell found mandatory voting was detrimental to unions, with a 20 percent decrease in the success of union organizing drives when he analyzed the number of certification attempts and success rates in British Columbia. Susan Johnson's research indicated that mandatory voting reduced certification success rates by approximately 9 percentage points compared to what would have been under card check.<sup>1</sup> The primary reason is that under a mandatory vote process, employers have a greater opportunity to influence vote outcomes and engage in unfair labour practises.

These changes increase the incidence of employer interference in union organizing drives. It takes the form of anti-union propaganda, limited communication between union organizers and employees, threats to dismantle and shutdown workplaces, and various other unfair labour practices as defined by many labour boards.

While union density is high in many federally regulated industries, and in the federal public administration (union density at 77.6%),<sup>1</sup> Bill C-525 will make it more difficult to organize in these sectors, such as in inter-provincial transport or the financial industry.

SS:ah:cope225

---

1 Sources: Canadian Foundation For Labour Rights, Unions Matter 2013.

Michael Lynk, University of Western Ontario. Labour Law and the New Inequality, 2009.

---