



To: Merit Ontario Contractor Members
From: Michael Gallardo, Merit Ontario
Date: April 2, 2020
Re: Advisory on Certifications during COVID-19

The following information has been coordinated in conjunction with Mathews, Dinsdale & Clark LLP, and is presented to you as general information and not legal advice. We strongly recommend that contractor members always seek professional legal advice on construction labour relations (management) regarding your individual circumstances and operations.

Labour Relations in Ontario and COVID-19

COVID-19 is undoubtedly affecting the way our members conduct business. It is important to know that **currently the Ontario Labour Relations Board (“OLRB”) is still operating and accepting certification applications.**

Notwithstanding COVID-19 precautions from various governments and national, provincial and municipal health authorities, **contractors must remember that trade unions are still active in trying to obtain membership cards from unrepresented workers to unionize employers.**

News reports and videos on social media show union organizers rallying workers on jobsites to voice health and safety concerns to refuse work during the pandemic. It is not surprising that trade union organizers will misrepresent better health and safety protection as a union member as a sales pitch to unionize. **Astoundingly, in this time of crisis, LIUNA alone filed at least 4 card-based certification applications to the OLRB in the last 10 days, and probably more in the last 3 to 5 days which are not yet public.**

Last week, our outside law firm, Mathews, Dinsdale & Clark LLP (“MDC LLP”), whose lawyers regularly appear before the OLRB, requested strongly in a submission to the Chair of the OLRB that the OLRB immediately stop accepting new applications for certification due to the crisis caused by COVID-19. We are proud that MDC LLP has been the only employer-side law firm in the country to make any official arguments to a labour board or government in favour of suspending union organizing. MDC LLP did so not on behalf of any particular client, but for the general interests of justice for employers across the province who are all in one way or another affected by this awful virus.

Among the many important items raised in its letter, MDC LLP argued:

- that the normal 2-day time limit for filing a response is impossible and unsafe to comply with due to social distancing; and,
- as companies having zero or reduced staff, that undoubtedly workforces will be unfairly under-represented for the purpose of whether a union has obtained the majority support.



What is the direction of OLRB during COVID-19?

The OLRB unfortunately (and in our view misguidedly) **refused to stop accepting applications for certification**, and implemented some measures which both aide and harm employers:

- Applications for certification may now be accepted electronically via email. An application must still be served on the employer by fax, courier or hand delivery. **(We believe these same rules will apply to employers' responses);**
- the OLRB will continue to accept electronic membership cards where the authenticity of the cards can be verified;
- unions will be required to provide a declaration with any application for certification verifying that an employer remains operating and open for business;
- in-person hearings and mediations are cancelled until May 4, 2020, but the Board as much as possible is pushing teleconference and written case management; and,
- extensions beyond 2 days for employers to file responses will be considered on a case-by-case basis. The OLRB has stated it has been lenient in this regard so far. In assessing a request for an extension, it is likely the OLRB will place emphasis on the length of the delay and the extent to which the contractor is actually operating.

What to do during this time?

We urge contractors to remember the rules of union organizing even during the COVID-19 crisis and avoid the pitfalls. **All it takes is 2 employees.** "Saturday certifications" are no longer a union weapon for just Saturdays, holidays or rain days, as contractors reduce staff and jobsites. **We strongly remind contractors the following:**

- Union organizers are not permitted to trespass on sites, but owners or general contractors with control of the site must ensure the site is secure and not accessible to the public;
- wages and benefits will always be the number one sales pitch for unions, so don't leave yourself vulnerable by not having competitive wages and a plan in place for compensation to make sure employees do not feel "out of pocket" if there is no overtime or even a full work week;
- do not let health and safety become a rallying point – take every reasonable safety precaution that is required by law and recommended by government and local public health authorities; and,
- always be aware of which jobsites your employees are on at all times.