

**CRAWFORD
CHONDON &
ANDREE LLP**

**Management Labour &
Employment Lawyers**

2 County Court Blvd.
Suite 430
Brampton, ON
L6W 3W8

Tel: (905) 874-9343
Fax: (905) 874-1384
Toll Free:
1-877-874-9343

www.ccaemployerlaw.com

DAVID M. CHONDON
dchondon@ccaemployerlaw.com

KAREN L. FIELDS
kfields@ccaemployerlaw.com

SUSAN L. CRAWFORD
crawford@ccaemployerlaw.com

CHRISTOPHER M. ANDREE
candree@ccaemployerlaw.com

JAYSON A. RIDER
jrider@ccaemployerlaw.com

LAURA K. WILLIAMS
lwilliams@ccaemployerlaw.com

JUSTIN K. DIGGLE
jdiggle@ccaemployerlaw.com

ALLISON SMITH
asmith@ccaemployerlaw.com



The Employers' *Edge*

BULLETIN: MARCH 2004

Expiry of Construction Industry Collective Agreements Fast Approaching

As you are probably aware, construction trades agreements for all ICI sector employers in Ontario expire on April 30, 2004. Additionally, some collective agreements pertaining to the residential sector of the construction industry also expire by law on April 30, 2004. The residential sector collective agreements that expire by law are those in the following geographic areas:

- 1 City of Toronto;
- 2 Regional Municipality of Halton;
- 3 Regional Municipality of Peel;
- 4 Regional Municipality of York;
- 5 Regional Municipality of Durham; and
- 6 the Corporation of the County of Simcoe.

For those employees covered by the above construction trades agreements, it is now the "open period" where employees may seek decertification of their union and rival unions may seek to "raid" existing units. The open period ends at midnight on April 30, 2004.

Who Can File a Decertification Application?

Any employee in a bargaining unit covered by the *LRA* may apply at the appropriate time to the Ontario Labour Relations Board ("OLRB") to decertify his or her union.

An employer may not file a decertification application, nor can an employer initiate, threaten, encourage, coerce or intimidate its employees to do so.

An employee who applies for termination of bargaining rights in the construction industry must be working for the employer in the trade in the relevant geographic area for the majority of the day on the date of the application.

Crawford Chondon & Andree LLP's The Employers' Edge is published for informational purposes only, and is not intended to provide specific legal advice. If you wish to discuss any issue raised in this publication or if you have any questions related to any other labour or employment matter, we invite you to contact one of our lawyers. Copyright © 2004 CRAWFORD CHONDON & ANDREE LLP

CRAWFORD CHONDON & ANDREE LLP

Management Labour &
Employment Lawyers

Crawford Chondon & Andree LLP is a boutique law firm practising management labour and employment law. We have extensive experience representing employers in all types of labour and employment law matters. Our clients receive sophisticated, strategic and proactive advice with an emphasis on practical solutions.

Our lawyers and support staff use the most up-to-date technological resources to increase our efficiency, remain current on proposed legislative changes, access an extensive network of legal databases and other resources, and maintain our own comprehensive legal precedent system to ensure our clients receive the best legal representation available.

We are committed to providing timely and cost-effective legal services to employers. We also offer flexible and creative fee arrangements intended to make the cost of legal services more predictable.

“The Employers’ Choice”

How is the Application Decided?

If the OLRB is satisfied that at least 40 per cent of the employees working in the bargaining unit on the application date appear to no longer wish to be represented by the union, it will order a secret ballot vote. Only those employees at work in the applicable trade in the relevant geographic area for the majority of the day on the application date are eligible to vote. If a vote is ordered and more than 50 per cent of the eligible votes are cast in favour of decertification, the OLRB will declare that the union no longer represents the employees in that bargaining unit.

It should be noted that the above rules also apply to displacement or “raid” applications, where another union seeks to displace the incumbent union and become certified as the employees’ new representative.

Employer Initiation

As previously mentioned, during the open period employees have the right to decide whether or not they want to continue to be represented by a union. Employers cannot be involved in initiating or interfering with the process.

If the OLRB finds an employer initiated a decertification application or threatened,

coerced or intimidated its employees to decertify, the OLRB will dismiss the decertification application. The OLRB also has the power to award monetary and other remedies for unfair labour practices committed by employers who coerce, intimidate, threaten or exert undue influence in this process.

When faced with a complaint of employer initiation, coercion, intimidation, threats or undue influence, the OLRB will undertake a careful analysis to determine whether the employer’s conduct amounted to significant or influential involvement giving rise to the termination application. They may ask ‘but for the inducements, encouragement and exhortations of the employer, would this termination application have been brought?’

Communication with employees about employer preferences during decertification proceedings is, therefore, always risky and may jeopardize what would otherwise be a successful decertification application. The OLRB’s assessment of employer conduct is based on the particular facts of each case and we encourage you to contact our office prior to engaging in any discussion or communication with your employees about this issue.

We have, however, included the government published pamphlet entitled, “Union Decertification – Did you know?” By law, employers in Ontario are currently required to distribute this pamphlet to employees on an annual basis. If you have not already done so this year, we encourage you to do it now.

If you have any questions about your duties, responsibilities and options under the *Labour Relations Act*, please feel free to contact any of the lawyers at Crawford, Chondon & Andree LLP for assistance.