CONSOLIDATION ORDERS & REGISTRATION BARGAINING

INTRODUCTION

Registration collective bargaining occurs in two-year cycles. Each biennial bargaining round begins with the Labour Relations Board issuing a consolidation order. This order sets the framework for the ensuing bargaining round by grouping together trades. The groupings created by the consolidation order affects when unions can strike and employers can lock out.

Once the consolidation order is issued, the parties to each certificate (i.e., the Registered Employers' Organizations (REOs) and the trade union(s)) commence their own round of bargaining. Each REO and trade union(s) bargain for a **province-wide** agreement covering the **trade jurisdiction** within the **sector** referred to in their registration certificate. For example, the Electrical Contractors Association of Alberta bargains with the International Brotherhood of Electrical Workers over the terms of work for unionized electricians in the general construction sector. All construction registration bargaining occurs within the same biennial cycle. Each agreement must end on April 30 in an odd-numbered year.

Related to consolidation orders, this policy describes:

- the purpose and effect of consolidation orders; and
- how the Board decides consolidation orders.

Related to registration bargaining, this policy describes:

- the registration bargaining cycle;
- the timeliness of collective agreements; and
- the scope of the registration agreement.

Other sections of the chapter describe:

- The requirement that strikes or lockouts (and the votes that precede them) take place on a consolidated basis. See: [*Strikes and Lockouts Under Registration, Chapter 25(i)*].

- The provision for binding arbitration before a Construction Industry Disputes Resolution Tribunal (CIDRT) once 75% of the trades within a sector achieve collective agreements. See: [*Construction industry Disputes Resolution Tribunal, Chapter 25(j)*].

PURPOSE AND EFFECT OF A CONSOLIDATION ORDER

A consolidation order lists of all the current registration certificates at the beginning of a round of construction bargaining. The order then groups some of the certificates (or "trades") together. Although each "trade" bargains independently, all of the trades in the same group must (until they settle):

- take their strike and lockout votes together on a consolidated basis; and
- strike or lockout together, rather than alone.

Trades are consolidated and made to strike or lockout together to avoid the expense and disruption caused by serial strikes. It holds back trades who want to strike or lockout early until a sufficient number of similar trades are ready to strike or lockout as well.

While the Board has the authority to establish the consolidation order groupings, the parties can usually come to a general consensus about appropriate groupings. The Board is reluctant to reject a proposal having the support of the industry. For a sample Consolidation Order.

DECIDING AND ISSUING A CONSOLIDATION ORDER

There are four basic steps to take for each consolidation order:

- notify the affected parties;
- receive and review preliminary submissions;
- hold the hearing; and
- decide upon and issue the appropriate order.

The following text outlines the procedures and consideration at each of these steps.

Notify the Affected Parties

This process usually begins in May of the year before the current collective agreements expire. This gives the parties the summer to prepare any submissions and the fall for any hearings. The consolidation order must be issued so the parties have time to set their bargaining strategy before the January 1st commencement date (that is, 120 days before April 30, in the year the collective agreement expires. See: [*Section 59(2)*]).

Open a process file with a Board-initiated matter under Section 185. Treat all correspondence etc. as supporting documents on that file. Conclude the matter once the Board issues this final consolidation order. The Board, internally, should assess the last round of bargaining to identify any issues of concern. If the Board feels new directions are appropriate, it should identify this early on. Then proceed as follows:

- Put together a complete and accurate list of all registration certificates. Note any pending applications to grant, vary or revoke registration.
- Check the addresses, spokespersons and counsel, if known, for all the parties involved in each registration certificate.
- Check to see which groups of trade unions have not filed current or adequate rules. These are the rules to govern their bargaining and the administration of the registration and collective agreement. See [*Section 175(4)*].
- Draft an appropriate notice to each party telling them:

    - that the Board is beginning the consolidation order process;
    - the time, place and date for the Board's hearing;
    - the date for filing positions and written submissions (specify the number of copies);
    - that the Board encourages the parties to reach a consensus, and will mediate if necessary to achieve agreement;
    - (for groups of trade unions, if necessary) about the need to file their rules;
    - (for trade unions and groups of trade unions) that they are required to file any unfiled notices of bargaining relationships affected by the registration; and
    - provide a courtesy notice to the Deputy Minister and the Director of Mediation Services.

Receiving and Reviewing Preliminary Submissions

Preliminary submissions achieve three purposes:

- They encourage the parties to think about the issue early on in the process, which encourages settlement.
- They give the Board a picture of what may be in dispute. This gives an opportunity for informal mediation.
- There may be no dispute, or only a part of the order in dispute. If so, the Board can render a preliminary decision, and tell parties, unaffected by the dispute, that they need not attend the hearing.

Once submissions come in, the Board should:

- Make sure all parties have replied, and follow up on those that have not.
- Identify areas of conflict and areas of dispute.
- Begin mediation efforts where appropriate.
- Convene a panel to make any preliminary order possible, based on those parts of the consolidation order agreed upon, if any.
- Write to the parties describing any interim order, outlining the issues still in dispute, and providing the parties with any submissions or additional information they may not have. Make sure this goes out in good time before the scheduled hearing date.
- If all issues get resolved, convene a panel to make the Order. Then, notify everyone that the hearing is cancelled and send out the Order.

The Hearing

The hearing offers all affected parties the opportunity to present evidence and argument about what form the consolidation order should take. Different parties may take different positions. No one party carries an onus of proof. The Board described its role as follows:

> ... it does not view the formulation of an appropriate consolidation order as an adversarial matter between the parties which stands or falls on questions of onus of proof. The legislation gives the Board a specialized task. The Board has expertise in this area. The Board has called a hearing and heard whatever argument and evidence the parties wished to adduce to assist in the task. However, in deciding, the Board will draw upon its expertise, its knowledge of industry patterns, trends and history, the apparent goals of the legislation, and any other relevant considerations. See: [*A Consolidation Order under s. 183 of the Labour Relations Code* [1989] Alta.L.R.B.R. 449 at 461].

Usually, the party wanting a change from the previous order will present their evidence first, but there is no set procedure for the order of proceeding.

Issuing the Appropriate Order

The Code lists three factors the Board must consider in issuing a consolidation order. See: [*Section 184(2)*]:

1. whether the group of trade unions have an affiliation with a central body;
2. the likelihood of common industrial action and serial strike and lockouts; and
3. the sectors within the construction industry.

Factors (1) and (3) involve little debate. At present, all trade unions involved in registration are affiliated to the various traditional craft-based unions. The requirement to consider sectors is really only an unnecessary reminder. Section 185(3), in any event, requires strike and lockout votes to operate within the sector, so cross-sector consolidation makes no sense. The crucial factor is, therefore, (2). The Board described this consideration as follows:

> The criteria for whether trades should be consolidated together is whether, without consolidation, they would be

likely to get involved in common industrial action or serial strikes. Put simply, if a strike by one trade would be likely to shut down another trade in any event, then the legislation tells the Board to consolidate them together so that, if they are going to strike they must do so at the same time rather than each going out, one after the other. See: [*A Consolidation Order under s. 183 of the Labour Relations Code* [1989] Alta.L.R.B.R. 449 at 459].

In Orders so far, the Board has consolidated each of the smaller sectors as one grouping. In general construction it has adopted three groupings—loosely defined as the start-up trades, the metal trades and the finishing trades. This recognizes, for example, that a finishing trades strike may have little impact on metal-trade employees working on an industrial project. This is because there is less finishing work than in commercial construction, and it occurs mostly at the end of the project once the metal-trades work is over. It reflects differences relevant to the type of general construction project (commercial or industrial) and differences related to the completion level of the project at the time of the strike or lockout.

Once the Board panel settles the form of the order, it is sent to all parties to construction registration bargaining. The process file is then closed. The Board uses the order as a checklist for monitoring the progress of construction bargaining. It remains crucial to the calculation of the eligibility for a strike or lockout vote (it sets the 60%/60% formula). It is also crucial to the 75% threshold, because it lists the total number of registrations. See: [*Construction Industry Strikes and Lockouts, Chapter 25(i); Construction Industry Disputes Resolution Tribunals, Chapter 25(j)*].

REGISTRATION BARGAINING CYCLE

Construction registration bargaining generally follows the normal collective bargaining rules. These are set out in Part 1, Divisions 10-21 of the *Labour Relations Code*. These rules are modified by the specific registration provisions in Part 3, Division 6 (Sections 183-192). Bargaining may involve several phases:

- the consolidation order (see above);
- the notice to bargain and the initial bargaining sessions;
- the mediation period;
- the period when strikes and lockouts are an option (subject to 60%/60% support);
- the strike or lockout. See: [*Strikes and Lockouts under Registration*, Chapter 25(i)];
- the CIDRT period, once 75% of the trades in the sector settle. See: [*Construction Industry Disputes Resolution Tribunals, Chapter 25(j)*]; and
- the period once collective agreements are in place.

The Consolidation Order

Each biennial round of construction bargaining starts with the Board issuing a consolidation order under Section 184 of the *Labour Relations Code*. This order establishes which trades within each sector must take any strike or lockout action on a consolidated basis.

Notice to Bargain

The early steps in bargaining follow the usual *Labour Relations Code* rules. Either the REO or the group of trade unions serves notice to bargain as per Section 59(2). This can be done not fewer than 60 days, and not greater than 120 days, before the expiry of the collective agreement. As construction registration agreements expire on April 30, parties usually serve notice after January 1.

Serving notice triggers the obligation to form committees, set proposals and meet. See: [*Sections 60-63*]. Two issues sometimes arise in the early stages of construction bargaining.

- **The scope of bargaining:** Sometimes REOs or unions want to negotiate beyond the scope of registration, dealing with non-construction issues at the same time. See: [*Structure of the Construction Industry, Chapter 25(a)*; *Scope of the Registration Agreement, below*].

- **The rules governing the group of trade unions:** Individual local trade unions sometimes resist bargaining as part of a group, preferring instead to conduct negotiations as if each local were negotiating its own collective agreement. Section 175(4) obliges those within the group to establish rules so they can negotiate with one voice. Sections 175(5) and (6) give the Board the authority to set rules if the locals within the group fail to do so.

Some parties will be able to settle their terms and conditions of employment through normal collective bargaining and sign a collective agreement. If not, they may go on and become involved in some of the processes that follow.

Mediation

Informal mediation under Section 64 is available at any time once bargaining commences. Either party to a dispute may ask for formal mediation to begin at any time, or the Minister may direct that the Director of Mediation Services appoint a mediator. See: [*Section 65*]. Subject to the comments below, the usual provisions for recommendations, votes and cooling-off periods apply.

Strikes and Lockout Votes

The REO or group of trade unions applying for the vote must have passed through the 14-day cooling-off period following mediation. See: [*Sections 185(3) and 187(3)*]. The Board only supervises the consolidated vote once 60% of the unsettled trades grouped together in the consolidation order apply. At this point, all the unsettled registration bargaining relationships grouped together take part. It makes no difference if some trades (in the remaining 40% of the unsettled trades) have not finished mediation or are in the cooling-off period. See: [*Certain Building Trades in Consolidation Order Group 1 v. Certain Registered Employers' Organizations in Consolidation Order Group 1* [1991] Alta.L.R.B.R. 451]. No lawful strike or lockout can occur before the existing collective agreement expires. See: [*Sections 185(2) and 187(2)*].

The Period When Strikes and Lockouts are an Option

Any REO or group of trade unions can apply for a strike or lockout vote at any time after their cooling off period has expired and after the nominal expiry of the collective agreement (i.e., April 30). See: [*Sections 185(2) and 187(2)*]. The Board receives and acknowledges these individual applications and stockpiles them until it has applications from "at least 60% of all those groups of trade unions (or REOs) in a sector that the Board has consolidated under Section 184 and that have not settled the terms of a collective agreement."

How do you calculate the 60%?

All calculations begin with the consolidation order. The order consolidates the different registration bargaining relationships into consolidated groups (do not confuse this term with a "group of trade unions" which consist only of the trade union locals involved in a single registration). For example, the 1991-93 Consolidation Order included a total of 24 trades in the general construction sector. The Board divided these trades into three consolidated groups, each with 8 trades. Assume an REO in the first group wanted to apply for a lockout vote. Their vote would have to wait until a sufficient number of those 8 also applied for a vote. The 60% applies to the unsettled trades in the group. So:

- if 8 remained unsettled, 5 applications would be needed;
- once 7 remained unsettled, 5 applications would be needed;
- once 6 remained unsettled, 4 applications would be needed;
- once 5 remained unsettled, 3 applications would be needed;
- once 4 remained unsettled, 3 applications would be needed;
- once 3 remained unsettled, 2 applications would be needed;
- once 2 remained unsettled, both would be needed; and
- once 1 remained unsettled, one would be sufficient.

The same rules apply for unions or groups of trade unions applying for strike votes for their trade.

The 60% figure is always applied to the unsettled trades within each subgroup set out in the consolidation order. It does not apply to all the trades in the sector, nor to all the trades referred to in the entire order. See: [*A Consolidation Order under Section 182 of the Labour Relations Code* [1989] Alta.L.R.B.R. 449].

Which Parties have not Settled the Terms of their Collective Agreement?

If a trade has negotiated a tentative agreement, but that agreement is still subject to ratification, it remains unsettled for the purposes of this calculation. If a party's failure to ratify an agreement unreasonably delays the right of other parties to conduct a strike or lockout vote (because their settlement would affect the 60% requirement), the Board may expedite their ratification process. See: [*Certain Building Trades in Consolidation Group Order 1 v. Certain REOs in Consolidation Order Group 1*, [1991] Alta.L.R.B.R. 454].

A court decision suggests that, if parties have entered into a collective agreement for a part of the scope of their registration certificate they may have "settled the terms of a collective agreement" for the purposes of this section. See: [*Insulators 110 v. CLRa Insulators (Provincial) Trade Division*, (Unreported Alta. Q.B. #9103-03205, August 23, 1991).

Activities within Other Groupings

The consolidation order creates independent groups. The state of bargaining within one of the groups does not affect the right to apply for a strike or lockout of parties within another grouping. Similarly, a strike or lockout involving one grouping does not affect the calculation in another group. It is only when 75% of the trades within the *sector* settle that these rights are affected. This is because, at that point, the Minister may end disputes by referring them to a Dispute Resolution Tribunal (DRT).

A separate policy describes the Board's procedures for supervising registration strike or lockout votes. See: [*Strikes and Lockouts under Registration, Chapter 25(i)*].

Strikes and Lockouts

Once the Board has supervised a consolidated strike or lockout vote that shows sufficient support under Section 185(5) or 187(5), the parties gain the lawful right to strike or lockout. Again, this must be on a consolidated basis. See: [*Section 186(2) and 188(2)*]. Any right to strike or lockout ends for a trade as soon as that trade settles its collective agreement. A separate policy describes construction strikes and lockouts. See: [*Strikes and Lockouts under Registration, Chapter 25(i)*].

The Construction Industry Dispute Resolution Tribunal Period

Once 75% of the trades in a sector (e.g., general construction) settle, the possibility of a Construction Industry Dispute Resolution Tribunal emerges. The Code bases the 75% figure on the registration certificates in the entire sector and **not** 75% of the registration certificates in the groupings within the sector set out in the consolidation order. Reaching 75% does not automatically result in a CIDRT. Nor does it automatically end any strike or lockout in progress. Section 189 allows parties to apply for a CIDRT for their trade. It also gives the Minister the option to refer disputes even if they parties do not apply. These procedures are set out fully in *Construction Industry Dispute Resolutions Tribunals, Chapter 25(j)*.

Reaching 75% settlements or appointing a CIDRT for one sector has no direct effect on the bargaining within any of the other three sectors.

The Collective Agreement Period

Once a collective agreement is settled, or awarded by a CIDRT, the parties must sign the agreement. Normally, they will do so without difficulty. When more than one local union is involved in a group of trade unions, the Board can direct that the individual locals sign, if the group's rules make no provision for signing. Section 190(3) makes CIDRT awards binding on the parties. It does not relieve the trade unions in the group from the obligation to sign the agreement under Section 131(1) of the Code. See: [*CLRa v. Millwrights 1460 and 1975* [1992] Alta.L.R.B.R. 33].

Once an agreement is settled, all rights to strikes and lockouts end, until the next round of bargaining. A settled trade cannot lawfully strike or lockout in support of an unsettled trade. This is true whether or not they were grouped together in a consolidation order.

Disputes may arise about who can administer a collective agreement entered into on behalf of a group of trade unions. These questions should be decided by the rules agreed upon under Section 175(3). If these rules prove inadequate, the Board can settle the question upon an application by any affected party under Section 175(6).

TIMELINESS OF COLLECTIVE AGREEMENTS

Section 183 of the *Labour Relations Code* provides:

> 183 Subject to section 130, a collective agreement entered into by a party to whom this Part applies shall provide for the expiry of the agreement on April 30 calculated biennially from April 30, 1989.

This section applies to registration construction collective agreements, not to collective agreements in the construction industry but outside the scope of any registration certificate.

What happens if a registration collective agreement does not provide for expiry on the specified April 30 date? Is that agreement void, is it extended to the next valid April 30 date, or will it be deemed to have expired at the last valid April 30 date? So far, the Board has not had to decide this issue.

SCOPE OF THE REGISTRATION AGREEMENT

Without registration, affected employers would be free to negotiate with trade unions directly. Registration suspends that right, and instead gives it to the REO. But an REO's statutory authority is limited to a particular part of the construction industry. It is limited by trade, sector and territory. Thus, an REO's authority to act under the Code, and the extent to which an unwilling employer can be bound by a registration agreement are both limited to the scope of the REO's statutory authority.

Sometimes agreements between unions and REOs do reach beyond the REO's trade sector, or territory, or beyond construction. The Board has ruled on several such cases, described below. As a general rule, the Board has consistently held that the registration agreement is limited to the trade, sector and territory set out in the registration certificate.

Employers' organizations often do possess authority to bargain for employers beyond that given by registration. Membership in an REO often involves giving a broad authority to bargain. Some employer's organizations get employers to sign specifically worded bargaining authorizations that may extend beyond Alberta, and beyond the definition of construction. When an REO negotiates beyond the scope of its **statutory** authority it may result in two agreements. The registration agreement binds all employers, but only to those terms within the scope of the REO's statutory authority. The second agreement will bind consenting employers to the additional terms. Such agreements, while confusing, are not illegal. Such agreements are only illegal if they attempt to encroach on some other REO's authority.

An employer may "consent" to being bound by such a broader agreement by giving the employers' organization bargaining authority, by signing or agreeing to be bound by the agreement, or by specifically ratifying the additional agreement once it is reached. This requires something beyond mere ratification of the registration agreement. The cases referred to below deal with terms that exceed the scope of an REO's authority in the following ways.

Extraterritoriality

An REO cannot use its authority to bind employers to terms extending to work beyond Alberta. This is particularly significant to work in the Northwest Territories, where several Alberta-based building trade unions have constitutional authority. See: [*CLRa v. UA 488, 496 and 179 et al.* [1988] Alta.L.R.B.R. 388; *Sheet Metal Contractors Association of Alberta v. CLRa and Sheet Metal Workers Union 8* [1986] Alta.L.R.B.R. 291].

An Alberta agreement will cover an Alberta employee doing some incidental work outside the province. Any work sufficient to give the labour board in the other territory authority to certify would no longer be incidental. This distinction is explained more fully in the *Sheet Metal* decision referred to above.

Non-Construction Work

The Code's registration provisions only apply to construction work as defined in the Code. See: [*Sections 1(g) and 163(1)*]. Some trades negotiate their service and maintenance terms (i.e., terms covering non-construction work) at the same time as their construction agreements. The smaller specialty trade subcontractors like elevator contractors or refractory bricklayers prefer this style of bargaining, which avoids meeting twice. For an example of the complex, but nonetheless valid, agreements that can result, see: [*Bricklayers 2, CLRa and A.P. Green Refractories et al.* [1984] Alta.L.R.B. 84-071; *CLRa v. Elevator Constructors 122 and 130*, [1985] Alta.L.R.B. 85-051].

Bargaining Beyond the Specified Trade

An REO cannot negotiate terms to cover work extending beyond its designated trade. For example, a clause in a plumbers and pipefitters agreement cannot purport to limit the contracting out of sprinkler-fitting work. See: [*Alberta Automatic Sprinklers Ltd. v. UA 488 et al* [1983] Alta.LRB 83-009]. Similarly, encroaching upon the same trade within a different sector is equally invalid. See: [*OE 955 v. Foundation Co. of Canada, Alberta Roadbuilders Assoc. and CLRa*, [1990] Alta.L.R.B.R. 40].