REGISTERED EMPLOYERS' ORGANIZATIONS

INTRODUCTION

Once employers' organizations become registered, the statute gives them special rights and responsibilities. Some of these rights and privileges parallel those of trade unions, although there are some important differences. This policy describes:

- REO filing requirements;
- REO dues provisions;
- the duty to represent employers fairly;
- protection for member employers; and
- trade union domination bar.

REO FILING REQUIREMENTS

Employers' organizations are defined by the Code to mean:

> 1 In this Act,
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> (n) "employers' organization" means an organization of employers that acts on behalf of an employer or employers and has as one of its objects the regulation of relations between employers and employees, whether or not the organization is a registered employers' organization;

If an employers' organization wants to become an REO for a part of the construction industry, it must file its constitutional documents and the names of its officers. Section 164(1) provides:

> 164(1) In accordance with the rules and procedures established by the Board, an employers' organization that intends to apply to become a registered employers' organization shall file with the Board
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> (a) a copy of its constitution, bylaws or other constitutional documents, and
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> (b) the names and addresses of its president, secretary, officers and other organizers and the names of its officers who are authorized to sign collective agreements.

When an employers' organization files these documents, Board staff:

- acknowledge receipt;
- create the appropriate EO file;

- enter the organization, its documents and its officers in the database; and
- follow up periodically to make sure the information is kept up to date.

The procedures for doing this are analogous to those for trade unions. See: [*Trade Union Filing Requirements, Chapter 33(b)*].

REO DUES PROVISIONS

Acting as a registered employers' organization costs money. Section 165 of the Code allows an REO to assess certain fees against employers who are bound by registration to pay for the cost of their carrying out their statutory duties. These dues are analogous to trade union dues paid by employees under a Rand Formula provision in a collective agreement. See: [*Trade Union Dues Provisions, Chapter 33(g)*]. The section provides:

> 165(1) A registered employers' organization may require an employer who is bound by a collective agreement entered into by the registered employers' organization or on whose behalf the registered employers' organization bargains collectively to pay dues to the registered employers' organization if the dues
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> > (a) are uniformly required to be paid by all members to the registered employers' organization, and
> > (b) are reasonably related to the services performed by the registered employers' organization in respect of its duties under this Act.

To collect dues under this section:

- the employers' organization must be registered for a part of the construction industry that affects the employer; and
- the employers' organization must be either a party to a collective agreement that binds the employer, or entitled to bargain collectively on behalf of that employer for that part of the construction industry.

When the REO is a branch or trade division of a larger organization, it is the branch or division and not the parent organization that has the legal right to assess and collect dues under Section 165.

The requirement that dues "are uniformly required to be paid by all members" applies only as among members of each individual branch or trade division. See: [*CLRa v. Fluor Canada Ltd. et al.* [1991] Alta.L.R.B.R. 410]. Dues based on a "cents per hour" formula are still uniformly required to be paid even though each contractor's dues may be different.

The statutory duties to which the dues must be reasonably related are not limited to the bare negotiation of collective agreements. Other duties include:

- collective agreement administration on grievances of industry-wide significance;
- representation on issues involving the structure of construction bargaining; and
- lobbying and consultation on matters of general industry significance.

See: [*CLRa v. Fluor Canada Ltd. et al.* [1992] Alta.L.R.B.R. 231].

The section does not just say the dues must "be reasonable." The words "reasonably related" require a reasonable relationship between the cost of providing services necessary to carry out the statutory duties of an REO, and the dues assessed to pay for such services. An REO may budget in advance, and assess dues on the basis of the services it customarily provides or anticipates providing within the budgetary period. [See: *CLRa v. Fluor Canada Ltd.* [1991] above].

When an REO claims unpaid dues from an employer, the Board and the Courts may have to adjudicate on part of the claim. Section 165(2) provides:

> 165(2) If an employer fails to pay the dues required under subsection (1) the dues are a debt payable by the employer to the registered employers' organization and may be collected by civil action.

The Board can hear and decide whether "the dues [are] required under subsection (1)" because this question will involve issues within the Board's expertise. There may, for example, be a question of whether the employer is bound by registration. Similarly, the Board may have to determine whether the dues assessed are reasonably related to the REO's statutory duties.

Questions about the actual non-payment of dues, their amount, and any enforcement steps, are to be dealt with by action in the civil courts. See: [*CLRa v. Fluor Canada et al.* [1990] Alta.L.R.B.R. 566]. The existence of Section 165 implies (as do several cases) that the REO cannot use collective agreement arbitration to collect dues from a defaulting employer. Some registration collective agreements still imply, however, these issues can be arbitrated.

When an employer seeks to enforce dues owing under Section 165 before the Board, all the Board can grant is a declaration. The declaration would say if appropriate, that the employer was bound by the agreement, and that the dues assessed met the conditions in Section 165(1). The REO could then sue the employer in Court for the amount owing without being faced with the argument that Section 165 did not apply. That issue would have already been decided by the Board.

The onus of proof in such Section 165 applications is on the REO. It must establish to the Board's satisfaction that the employer was bound to registration, that the dues were uniformly assessed and reasonably related to its statutory duties. See: [*CLRa v. Fluor Canada Ltd. et al.* [1991] above].

Registered employers' organizations often carry out additional activities beyond bargaining under the statute. For example, they may act as a trade organization promoting their sector of the industry.

Nothing in the Code prevents them doing this, and they may collect dues from **members** on account of these activities. If members fail to pay such additional dues, they can probably be sued because their agreement to belong is a contract. Section 165(3) makes this clear:

> 165(3) This section does not restrict the ability of a registered employers' organization to establish and collect dues from its members in addition to the dues referred to in subsection (1).

Non-members can be bound by registration and must pay Section 165(1) dues. Non-members are under no **statutory** obligation to pay dues beyond those allowed by Section 165(1).

DUTY TO REPRESENT EMPLOYERS FAIRLY

No section in the *Labour Relations Code* says directly that an REO has a duty to represent employers fairly with respect to matters arising out of a collective agreement. This is in contrast to Section 153 which clearly imposes such a duty on trade unions.

This omission may be because there is no clear statutory duty on an REO to represent employers in grievances. In most cases, employers carry or defend their own grievances without any REO involvement. One case suggests, however, that the statute, read as a whole, implies a general duty of fairness on registered employers' organizations in favour of the employers they represent.

Between 1979 and 1986, some electrical contractors challenged the representation they received from the Electrical Contractors Association, an REO. In particular, they objected to the influence of non-union employers within the association, the existence of an industry fund dues provision, and a failure to consult employers adequately during negotiations. Several of the resulting cases commented on the nature of an REO's duties in these areas. One case, particularly, describes the REO's duty to the employers it represents. In *Industrial Power Installations (Edmonton) Ltd. et al. v. Electrical Contractors Ltd., IBEW 254 and 424* [1984] Alta.L.R.B. 84-005, the Board states:

> We have then concluded that a duty does exist, we have concluded certainly that we may deregister, we have also concluded that it isn't every breach of that duty that is going to bring about deregistration.
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> What is obviously now required and perhaps has already been too much postponed, is what is this duty to which we have made brief reference? We see it as a duty to fairly represent the employers. It is a duty to act as proper registered employers' organization. It is a duty to properly represent the employers in collective bargaining. One might say to fairly and properly represent the employers. We are also prepared to say that as part of this duty it must represent such employers without arbitrariness, discrimination, or actions in bad faith.
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> ...
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> A registered employers' organization must ensure that the employers that it represents have a reasonable opportunity to make their views on collective bargaining known. The Board of course

> must also keep in mind the principle of the majoritarian rule. The right to make suggestions, the right to input the collective bargaining process does not ensure that minority views will hold sway. Indeed clearly they may in the result be ignored. The fundamental principle of the majoritarian rule is that the majority governs. Nor does this mean that a registered employers' organization is bound to consistently and uniformly, and one might say almost endlessly, seek the views of the employers at every step in the collective bargaining process. The reality of the collective bargaining process demands that a registered employers' organization must have authority to act and must have the flexibility to act and to make decisions that it feels are in the best interests of the employers that it represents. Obviously it must do this at times without specific instruction. But what is equally obvious is that at times in the collective bargaining process a registered employers' organization can and should go back to its constituency to take care of changes in position to react to proposals, to redefine positions where impasses having been reached in the collective bargaining process. It is quite obvious that you can't set don [sic] any general rule to cover the immense complexity of positions, postures, and changes that occur in a collective bargaining process. Those circumstances may on occasion have to be judged independently and individually by this Board if an employer or employers choose to bring before this Board those circumstances and claim that the registered employers' organization has not acted properly in reflecting their wishes or has acted in a manner that is discriminatory or arbitrary.

In the same case, the Board ruled than an REO must ensure that its decision concerning unionized contractors must be sufficiently insulated from the influence of members who are not unionized with the union that is party to the registration.

This case holds that an employer may file a general complaint alleging a breach of an REO's duties to an employer. This is so, even though the statute contains no explicit section. The duty is said to be implicit in the scheme of the statute. Should it find a breach, the Board could, in an extreme case, revoke the registration. For less extreme cases, the Board could fashion a suitable remedial order to ensure the REO carried out its duties fairly.

PROTECTIONS FOR MEMBER EMPLOYERS

Employers' organizations are created by their members, not by the statute. Their structure and their constitution are for their members to decide for themselves. As with trade unions, however, the *Labour Relations Code* imposes certain basic procedural protections for employers when dealing with an employers' organization. These apply whether the organization is registered or not.

Section 21(2) provides employers with the basic right to belong to an employers' organization and to take part in its activities. It provides:

> 21(2) An employer has the right
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> (a) to be a member of an employers' organization and to participate in its lawful activities,
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> (b) to bargain collectively with the employer's employees, and
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> (c) to conduct collective bargaining through an employers' organization.

Section 31 gives some basic due process rights for employers when dealing with an employers' organization.

> 31 No employers' organization shall expel or suspend any of its members, or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the employers' organization, unless that person has been
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> (a) served personally or by double registered mail with specific charges in writing, and
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> (b) given a reasonable time to prepare the person's defence.

A breach of this section can result in a complaint to the Board.

RECONSIDERATION OF REGISTRATION CERTIFICATES

Registration certificates may be amended through reconsideration of the original certificate. In *CLRa* v. *CJA Locals 1325 and 2103 et al.* [2003] Alta. L.R.B.R. 28, the Board granted a reconsideration application brought by CLRa (subject to a vote) to add a union to an existing registration certificate. The application was granted on the basis it met the requirements of the *Code* including support of 40% of the unionised contractors in a bargaining relationship with the union being added. A second application to add a different union was dismissed on the basis no contractors with a subsisting relationship with the union were engaged in the industry. As the *Code* requires the consent of those contractors actually engaged in the industry with a bargaining relationship with the union, the requirements of the *Code* were not met and the application was dismissed.

TRADE UNION DOMINATION BAR

Just as trade unions must be free from employer domination to function effectively, employers must be free of trade union domination. Registration gives an REO tremendous power to influence the profitability of the contractors it represents. To protect this power from undue trade union influence, Section 174 prohibits the registration of any employers' organization if its administration, management or policy is, in the opinion of the Board:

- dominated by a trade union; or
- influenced by a trade union so that the employers' organization's fitness to represent employers for the purposes of collective bargaining is impaired.

So far, the Board has not ruled on any cases involving this section.

Section 151(c) also prohibits trade unions and persons acting on behalf of trade unions for participating or interfering in the formation or administration of an employers' organization.