

McGRADY & YOUNG
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A.U.C.E. Local 1
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University of British Columbia
Vancouver, B.C.
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A. U. C. E.

Attention: Fairleigh Wettig

Dear Fairleigh:

re: Secession from A.U.C.E. Provincial;
Successor Application

You have asked me to give the Union an opinion on the process that should be followed to :

- (a) secede from A.U.C.E. Provincial;
- (b) transfer A.U.C.E. Local 1's certification to another trade union.

I understand that there is, once again, a drive to change the structure of A.U.C.E. Local 1, amalgamate with another union or create new affiliations. There are some members who fear that such an action may jeopardize A.U.C.E.'s certification and you have asked me to comment on these matters.

The first matter to clarify is that A.U.C.E.'s secession from A.U.C.E. Provincial will not affect the integrity of your union or the status of your certification. The Labour Board will only be concerned about your relations with A.U.C.E. Provincial to the extent that that relationship relates to considerations within their jurisdiction.

At the time of a certification application, the Board will ensure that a Union has a constitution and that it has been formed in accordance with these rules. Except in circumstances that give rise to S.7 complaints, the Board is not concerned with matters which are completely internal to the Union.

McGRADY & YOUNG

re: Successor Application

I understand that there is, at present, no procedure to secede from A.U.C.E. Provincial. In these circumstances, it appears that A.U.C.E. Local 1 need only declare that they are no longer affiliated and that no further dues will be paid.

A.U.C.E. Local 1 must ensure that they have a constitution which can operate satisfactorily in the absence of A.U.C.E. Provincial. All necessary changes should be made to state A.U.C.E. 1's independence. The only concern is to ensure that none of your present members are deprived of any rights as a result of these changes (such as a right of appeal from an internal disciplinary matter).

A.U.C.E. Local 1 can change their name in accordance with their own constitution. Once the name has been changed, the Union then makes an application to carry their certification to reflect the change.

There will be absolutely no impact on A.U.C.E. Local 1's certification as a result of these actions. A.U.C.E. status as a trade union will be maintained through the change because of the existence of a constitution and a trade union structure that is independent of A.U.C.E. Provincial.

A.U.C.E. Local 1 can be taken over by another trade union by operation of S.54 of the Code. The application is not a raid, and need not be done within any particular period of the collective agreement. S.54 reads :

"54. (1) Where a trade union claims that, by reason of a merger, amalgamation or a transfer of jurisdiction, it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was certified as bargaining agent for a unit, the board may, in a proceeding before the board or on application by the trade union concerned

(a) declare that the successor has, or has not, acquired the rights, privileges and duties under this Act of its predecessor; or

(b) dismiss the application.

(2) Before issuing a declaration under subsection (1), the board may make inquiries, require the production of the evidence and hold the votes it considers necessary or advisable.

(3) Where the board makes an affirmative declaration under subsection (1), for the purposes

McGRADY & YOUNG

re: Successor Application

of this Act the successor acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise."

As set out in S.54, the application is made by the Union which claims to be the successor. The Board may require a vote depending upon the evidence that is put before it.

The leading case on S.54 applications is B.C. Marine Workers and B.C.G.E.U. (1978 1 CAN. LRBR 17). In that case the Marine Workers made an application to the Board for a declaration that they were the successor to the B.C.G.E.U. as the bargaining agent for all employees of the B.C. Ferries. The application was supported by a Memorandum of Agreement between the two Unions which transferred the collective bargaining rights held by the B.C.G.E.U. to the Marine Workers.

One issue was the question of whether the executive of the B.C.G.E.U. were lawfully authorized to transfer the bargaining unit rights to the Marine Workers. The Board looked at the B.C.G.E.U. Constitution and concluded they had the authority. In addition, the Marine Workers established that they had the constitutional authority and also that there was overwhelming support for the transfer of the jurisdiction.

The Board said :

"Under S.54, Board policy is not to conduct a representation vote itself when its investigations disclose that the union's internal procedures have given the affected employees an adequate opportunity to express their views and to reach a majority verdict on the transfer."

The evidence was that a resolution outlining the proposed transfer of jurisdiction was distributed to all members. The resolution was read at a meeting called by the Marine Workers' Union and there was "overwhelming support".

The decision does not specify what percentage support is necessary for an application under S.54. Certainly, more than 50% support is required.

It is my recommendation that the appropriate process would be to send out a questionnaire to your membership asking members if :

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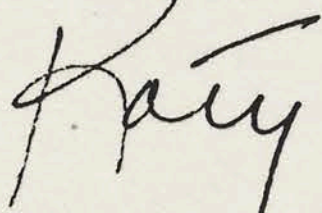
re: Successor Application

- (1) They wish to remain with A.U.C.E.
Provincial or not;
- (2) If they do not want to remain with
A.U.C.E. Provincial, do they wish to
be represented by another union.

Depending upon the response, A.U.C.E. should then approach the union who is supported by a majority of the members. The new union would then directly approach your members to get an indication of their support to ascertain whether they can apply under S.54.

I trust this is of assistance.

Yours truly
McGRADY & YOUNG



Katharine P. Young

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