Tenuously Unionized: Temporary Migrant Workers and the Limits of Formal Mechanisms for Facilitating Collective Bargaining

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Outline

- Mechanisms available in BC to encourage access to collective bargaining: the persistence of Wagnerism
- Local 1518’s application to represent SAWP employees: strategies and challenges
- The Collective Agreement between UFCW Local 1518 and Sidhu
The Regulatory Framework Governing Collective Bargaining in BC

- **British Columbia Labour Relations Code (BCLRC)**
  - Defining principles: majority rule, bargaining unit exclusivity
  - Main features: certification by cards and majority vote, protection against unfair labour practices, enforceable obligations to bargain in good faith

- Decentralized model of collective bargaining premised on assumption bargaining will be organized by industry, normally take place at the workplace level, and involve workers residing locally

- The Code’s overarching aim: industrial stability
Bargaining Unit Determination: Establishing a Community of Interest

- Factors:
  - similarity in skills, interests, duties and working conditions;
  - the physical and administrative structure of the employer;
  - functional integration;
  - geography; and,
  - normally, the practice and history of collective bargaining in the industry or sector

- Factors consolidated and modernized in 1993 in Island Medical Laboratories (IML)
Bargaining Unit Determination: IML and the Traditionally Difficult to Organize (TDO) Doctrine

- When the balance of power between workers and employers is so uneven that workers are uniquely vulnerable, the Board may use its discretion to emphasize facilitating access to collective bargaining.

- TDO doctrine: permits the Board to “relax” the standard of appropriateness to facilitate initial certifications based on an appropriate, but not necessarily the most appropriate, unit.
In July 2008, Local 1518 argued SAWP employees share a community of interest as they work under terms and conditions of employment distinct from domestic employees due to their participation in a temporary migrant work program.

The union also contended that SAWP employees of Sidhu are TDO.

The employer’s response:
- SAWP employees simply do not represent an appropriate bargaining unit.
- SAWP employees are not TDO.
- The TDO doctrine does not provide a basis for certifying a unit cutting across a classification.
Local 1518’s response:
- SAWP employees, as foreign nationals, and Canadian workers, as citizens and permanent residents, have different interests flowing from their employment status and working conditions, which are governed by distinct legal regimes.

Employer’s response:
- IML’s position is that bargaining units must be “conducive to the orderly resolution of … disputes by the parties”
- Interpreting functional integration in line with immigration status, preferring, instead, to consider job duties.
The Board’s First Decision

- In dispute was whether or not the proposed bargaining unit of SAWP employees was appropriate

- To address the dispute, the Board applied a test of appropriateness based on all four principles advanced in IML and found:
  - evidence on the first factor found to be mixed
  - functional integration to represent neither “a rational” nor a “defensible” line around which to draw a bargaining unit of SAWP employees

- Regarding whether SAWP employees are TDO, the question was if there was justification to “allow the division of a classification at a single work site” and... the Board found that SAWP employees’ distinctiveness, did not “substantially mitigate... or eliminate...the labour relations concerns”

- The Board denied Local 1518’s application for certification
UFCW Local 1518’s Request for Reconsideration

Local 1518’s argument:
- Employment status and terms and conditions of employment are integral to workers’ community of interest. SAWP employees therefore constitute a single classification, making the policy against cross-classification certification moot.
- The original decision should have relaxed the BCLRB’s appropriateness criteria given the TDO doctrine since “it purported to assume that the sector was difficult to organize.”

Reconsideration Panel found in the union’s favour
UFCW Local 1518’s Second Application

- Local 1518’s claims:
  - A unit of SAWP employees is appropriate because its members share a community of interest
  - SAWP employees are TDO beyond question
  - Should a bargaining unit be certified, work jurisdiction would not be the union’s focus in pursuit of a first collective agreement but rather dignity and respect

- The employer continued its objections
The Board’s Second Decision

- In February 2010, the BCLRB certified a unit of SAWP employees while limiting the scope of collective bargaining by excluding work-jurisdiction.

- SAWP employees’ terms and conditions of employment and employment status distinguish them from domestic farm workers but their community of interest was not sufficiently distinct to overshadow other appropriateness criteria.
Conclusion – Tenuously Unionized

- Board ruled that these temporary migrant workers’ shared terms and conditions of employment and employment status did not hold sufficient weight to allow them to negotiate a “normal” range of terms.

- Ruling reveals inherent contradictions in the Board’s mandate to facilitate access to collective bargaining and ensure industrial stability.

- Consequences evident in the restricted terms of the first collective agreement which focus on issues related to dignity and respect (e.g., a seniority list maintaining the priority of foreign workers in prior seasons and recall rights).

- Yet the agreement only covers matters without an impact on work jurisdiction.