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Construction Corner | Greg McGinnis

Beware, labour lawyer warns contractors working for Ontario Power Generation, Bruce Power

Non-union contractors who decide to perform work for Ontario Power Generation and Bruce Power should do so with their eyes open. They could end up with a union not just for the “electric power systems” work, but for ICI construction across Ontario.

Given the high labour rates and benefits contained in the ICI provincial agreements, this could result in significant business challenges for mid-sized trade and general contractors, particularly in the current economic environment.

How can this happen? The standard construction contract with OPG contains a “labour requirements” clause that requires the contractor to apply the terms of the “EPSCA” collective agreements with the relevant unions.

In practice, this usually means that the contractor has to recognize the relevant unions for the “electrical power systems sector” (which basically means work for OPG and Bruce Power).

The contractor must also agree to apply the “EPSCA” collective agreement with those unions. The contractor’s employees working on the job must become union members.



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So far, so good. The problem arises when the work is done and the contractor’s employees, who are still members of the union, go back to doing ICI work. At that point, the union can apply for province-wide certification of the contractor in the ICI sector based on the fact that the contractor’s employees are members of the union. It may be that the employees who became union members only did so because they had no choice if they wanted to work on the Bruce/OPG jobs.

It doesn’t matter. From a labour law point of view, if they are members, they are members. For purposes of the Labour Relations Act, union membership cannot be restricted to apply only to the sector where the worker was working when he joined.

In a union certification application, where there is usually no secret ballot vote to verify the employees’ wishes, the mere fact that the employees are union members would be enough to certify the employer province-wide in the ICI sector, even if none of the employees actually wanted that to happen.

As a result, non-union contractors who want to do work for Bruce Power or OPG need to consider the risks. Signing an “EPSCA” agreement and enrolling your employees in the union can have significant, unintended consequences.

The electrical power system is the only sector of the construction industry where all of the players effectively must be unionized to perform the work. If the threat of unintended unionization outside

that sector scares non-union contractors away from performing work in it, this could have the effect of reducing competition and increasing costs – not to mention excluding a significant segment of the industry from performing this work.

It is unrealistic to expect that there will be a change to the “labour requirements” for working on OPG and Bruce Power jobs, although some may feel that this would be in the public interest. It is also unrealistic to ignore union membership evidence collected for work in the electrical power system sector.

At a policy level, there may really be only one realistic solution to this problem: bring back secret ballot votes in construction industry applications for certification, so that contractors really know whether unionization is what employees really wanted in the first place.

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