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Time runs out for trade unions

Lawyers should be looking to reverse advantages

Presented by



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It is no coincidence that the sectors, industries and companies most affected by the economic downturn -- with some writhing in their death throes -- are unionized.

It is the culmination of an industrial recession that has affected unionized employers who have been rendered uncompetitive by the tripartite burdens long taken for granted; inflexibility, higher cost of operations and low productivity. In many cases, they have been unionized so long they have forgotten the advantages of the alternative.

With Canadian firms no longer able to rely on a weak currency to stay competitive, they must face taking on the unions -- either by hard bargaining or decertification.

Traditionally, public sector unions fare better, perhaps because negotiators are spending taxpayers money. That's about to change if the federal Conservative government remains in power and keeps its nerve. It has proposed limiting wage increases to 1.5% for the next three years for unionized employees (from the 3%-plus increases now). This follows a startlingly low four-year 6.8% settlement for the Public Service Alliance of Canada, the largest public-sector union and will influence private sector wage settlements.

The automotive industry has seen Ken Lewenza, Canadian Auto Workers union president, declare he would "absolutely not" agree to job cuts or wage concessions as part of a bailout package for the industry. If he persists, large segments of the industry will likely go into bankruptcy, allowing the purchasers of its remnants to rid themselves of ruinous collective agreements and obligations to third parties.

When Frank Stronach decided the cure for Magna's ailments was voluntary recognition by the CAW, I immediately shorted the stock. I reasoned, any plant that is unionized is immediately stripped of much of its market value, whatever wage settlement is arrived at. It turned out to be one of my best investments. Here are recent examples from my practice:

In a recent case involving the CAW in Oshawa, my client obtained a labour board order for a vote and convinced its members to accept a collective agreement against the union's recommendation. Rather than live with a collective agreement that did not provide the terms it was accustomed to, the CAW chose to abandon its bargaining rights at the company.

Fighting union power is simpler than most employers realize. There is an entire cottage industry of compliant industrial relations managers and equally non-confrontative lawyers who accept unions as a way of life, but these advantages can be reversed.

Another case involved a client who had just been certified by a large international union. Its counsel from a large management labour firm proposed several items for an initial collective agreement that resembled concession usually negotiated over many years. For example, on point was that each new employee would spend half an hour with the union steward on the employer's time and payroll. These were not the union's proposals, rather they came from the employer. The counsel clearly failed to grasp the truism, if you do not ask, you cannot possibly obtain.

When I was retained, I immediately withdrew many of these negotiated agreements. The final agreement between my client and the union was much more protective of management rights.

In one ongoing case, a client faces several applications before the labour relations board by a large national union that wants the board to give it the bargaining power it lacks. The union long ago lost support in the company, because the client treats its employees well. Most of the employees have signed a decertification petition that was disallowed by the board on technical grounds.

My client has requested conciliation knowing that if the union were sufficiently foolish to call a strike, the employees would cross the line. And if the union does not strike, union dues no longer need to be remitted, effectively giving employees a raise.

However, the company must wait six months to file another decertification application. What labour relations are being served by requiring an employer to negotiate with a union that no longer has support? Why should employees uniformly opposed to the union be unable to decertify it without jumping through procedural hoops? If the government is revising legislation, this is one to address.

-- Howard Levitt, counsel to Lang Michener LLP, is an employment lawyer.