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Lundi 9 mai 2005

Standing committee on social policy

Comité permanent de la politique sociale

Labour Relations Statute Law Amendment Act, 2005

Loi de 2005 modifiant des lois concernant les relations de travail

Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 9 May 2005

Lundi 9 mai 2005

The committee met at 1559 in committee room 1.

LABOUR RELATIONS STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS CONCERNANT LES RELATIONS DE TRAVAIL

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Projet de loi 144, Loi modifiant des lois concernant les relations de travail.

The Chair (Mr. Mario G. Racco): The meeting can start now. Thank you all for attending. We are considering Bill 144, An Act to amend certain statutes relating to labour relations, clause by clause.

We will commence with item 1, a PC motion. Mrs. Witmer.

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I move that subsection 7(7) of the Labour Relations Act, 1995, as set out in section 1 of the bill, be amended be striking out "subsections 128.1(9), (14), (19), (20) and (21)."

The Chair: Would you like to make some comments?

Mrs. Witmer: Yes. This would strike out the provision that would recognize section 128.1, where there could be an application for certification without a worker's democratic right to a secret ballot vote. We support a worker's fundamental democratic right to a secret ballot vote. We believe that it is essential in all circumstances, and we cannot support the amendment of section 128.1, because it would strip all workers in this province of their right to that secret ballot vote.

Mr. Peter Kormos (Niagara Centre): In fact, that's the concern of the NDP, in that 128.1 wouldn't give all workers the right to card-based certification, but only building trades workers. I very much wanted Ms. Witmer to explain the reasons for this amendment, because I want to very specifically indicate that New Democrats can't and won't support Ms. Witmer's amendment. We do not begrudge any worker in this province the right to join a trade union by virtue of signing a membership card. We agree with those workers from both the building trades and the industrial unions, as well as the public sector, who declared adamantly that the quality of a signed card is as good as anything when it comes to workers indicating whether or not they want to belong to a trade union.

In fact, I was impressed to the greatest extent at the view of the building trades unions—perhaps other than for one, and one only, that didn't share this view—that qualitatively a construction worker's signature is certainly not inferior to a Wal-Mart worker's signature, and that if it's good enough for construction workers—and I think it is—it's good enough for Wal-Mart workers. We heard about the incredible nature of employee intimidation and harassment, the intervention that can occur in that oh so brief period between a card campaign—signing cards—and the actual vote. Quite frankly, tinkering with the voting process—I appreciate there has been some discussion about that—doesn't address the issue.

I hear the government, in its effort to justify card-based certification for building trades only, talking about the building trades as a somewhat different type of workplace. I don't dispute that there are unique qualities to the building trades workplace. But if the issue is the quality of that worker's indication as to whether they want to join a union, then the other argument is, quite frankly, not relevant. If it's good enough for the building trades worker, it's good enough for other workers. That's why I'm going to be asking for a recorded vote on this motion. I want to be clearly opposed to denying building trades workers the right to card-based certification, but I want to make it quite clear that I am similarly opposed to denying non-building trades workers the right to card-based certification.

Mr. Kevin Daniel Flynn (Oakville): Speaking against the amendment that's been put forward this afternoon, I think we've heard the two extremes from Mrs. Witmer and from Mr. Kormos. I think what we are trying to do is achieve some balance and fairness in this. We believe that the distinct features of the construction industry mean that they should be treated differently, and that is what the bill is proposing to do. I think it is fair and balanced.

Mr. Ted Arnott (Waterloo–Wellington): There are a number of amendments before this committee this afternoon and I don't want to unduly belabour the point, but I want to remind committee members that a significant number of presenters to this committee in the discussion on Bill 144 expressed support for the idea of secret ballot votes on important union decisions. Certainly our party has had a tradition of supporting that. When we were in government in 1995, we brought forward Bill 7, which had the express purpose of ensuring that there would be a secret ballot vote. Mr. Kormos, in

his discussion, alluded to the possibility of intimidation that may take place in terms of the internal mechanics of these decisions. If you don't have a secret ballot vote, you don't have an opportunity for workers to express their preference absolutely free from intimidation.

I'm disappointed that the parliamentary assistant has indicated that the government is not supporting the motion. We haven't heard from the other four government members; perhaps they're going to consider supporting our motion. We would ask them to do so.

Mr. Kormos: In closing very promptly, I'm disappointed that the parliamentary assistant would characterize Ms. Witmer's position in this particular regard as extreme, or in fact mine. I want to say that Ms. Witmer and the Conservatives have a perspective. They have a point of view around card-based certification, and they made that clear when they presented Bill 7. They have been consistent. They wanted to remove, from every worker, card-based certification. I don't agree with that—I fundamentally disagree with them—but I understand it. It is a point of view that is legitimate in that it represents the interests of certain sectors in our society, not the sectors I necessarily want to speak for, but it is a point of view, and the Tories have been incredibly consistent in that regard. I can have regard for the Conservatives even though I fundamentally disagree.

Having said that, the New Democrats have been very consistent. In fact, we've been consistent over the term of five decades now, a consistency that was generated by Leslie Frost, maintained by John Robarts, and then by Bill Davis, Frank Miller, David Peterson and the NDP government. It's 50 years of consistency.

The Liberals somehow seem to think that if they've got one foot firmly planted with the Tories and another foot up in the air somewhere, like a dog looking for the right fencepost, that's called balance. I call it a bizarre approach to labour relations reform. At the very best, it's incrementalism, but it's incrementalism that holds out no hope for the other workers in the province. Very interesting.

The Chair: Is there any further debate?

Mr. Kormos: Recorded vote.

The Chair: I will now put the question, and it will be a recorded vote. Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The motion is lost.

Shall section 1 carry? There's no amendment.

Those in favour? Those against? Section 1 carries without amendment.

Section 1.1: Mr. Kormos, you have given notice of a motion.

Mr. Kormos: I haven't moved the motion yet. I'm seeking unanimous consent to move this motion, because it amends the Ontario Labour Relations Act and not the bill before us. Therefore, it requires unanimous consent to be put to this committee. In terms of the orderliness, and within the context of Bill 144, it is in a technical way out of order, although it has the capacity to amend the act in a legitimate way. The effect of it, of course, is to extend card-based certification to every worker in the province of Ontario. I'm seeking unanimous consent to move this amendment to the bill.

Mr. Arnott: On a point of order, Mr Chair: Is it in fact in order? Unanimous consent to the motion—

The Chair: They asked consent. It is in order. What I was going to do was give an explanation so that everybody could understand what we are doing, and then I was going to recognize Mr. Kormos, who I understood wanted to ask unanimous consent. Since he has already asked for it, I'm going to see if there is support. I don't think we should debate it. He asked for it; if there is support, then we will move on.

The request is for unanimous support. Do I hear unanimous support?

Ms. Kathleen O. Wynne (Don Valley West): I just want to be clear: Mr. Kormos is asking unanimous consent to move the motion?

The Chair: The motion that I determined not to be in order.

Ms. Wynne: Which you determined not to be in order? That's what I'm not clear about: whether this motion is in order.

The Chair: Notice of a motion was given. That motion, as I understand, is not in order. Mr. Kormos has not read the motion into the record, but we all know what it is, because it's page 2. Am I right? Therefore, the question Mr. Kormos has asked is: Is there unanimous support? If the answer is yes, then we will move on. If the answer is no, I have ruled that we move on to the next item. Does Mr. Kormos agree?

Mr. Kormos: That's correct.

The Chair: Can I then ask, is there unanimous support, yes or no? Agreed. Anybody against it?

Interjections.

The Chair: Mr. Kormos, let me do this: I want you to read the motion and then we'll see if there is unanimous consent.

1610

Mr. Kormos: With respect, Chair, the Chair is, as they say, functus with respect to that now because I've sought unanimous consent to move a motion that, in normal terms, would be out of order because it amends the act rather than the bill, and I got that unanimous consent. So if people want to defeat it now, they can defeat it. You can't revisit it, with respect.

The Chair: I appreciate that I'm not too sure everybody was clear on what was happening.

Mr. Kormos: It's not my fault. It's not your fault. It's not mine.

Ms. Wynne: It's probably my fault. I'm sorry. Procedurally, Mr Chair, if now the motion is read, you can't rule it out of order? Is that the case?

The Chair: Only if there is unanimous consent to accept.

Ms. Wynne: After it's been read into the record?

The Chair: Clerk, you had better answer that one. It's a technical question.

Mr. Kormos: I asked for unanimous consent to move an out-of-order motion—

Ms. Wynne: Before you read the motion, you asked for unanimous consent?

Mr. Kormos: Yes.

The Clerk of the Committee (Ms. Anne Stokes): Technically, Mr. Kormos was asking for unanimous consent to move the motion. He has the right to move the motion. It hasn't been ruled out of order yet, but if it's ruled out of order, he could also ask for unanimous consent that it be considered, regardless.

Ms. Wynne: Yes, but what I'm asking is, once he reads into the record, it can be ruled out of order?

The Clerk of the Committee: I'm not clear whether unanimous consent was given to the request.

Ms. Wynne: You see, I didn't hear a ruling that the motion was out of order because we didn't have a motion before us. I'd like to know, once it's read on the record, if it can then be ruled out of order, because if it is, then I don't want to have to consider it.

The Chair: What Mr. Kormos did, instead of reading the motion, he asked for unanimous consent. That's what he asked, and in fairness to him, we asked for a vote and I saw that only three people voted. The rest did not vote. Now the argument I hear is that since nobody voted against it—is that correct, though, legally?

The Clerk of the Committee: If you feel there was unanimous consent.

The Chair: I think there was a group of you who were not clear what was happening on the matter, so how could there be—

Interjection.

The Chair: But I don't know if it's wise for us to move on.

Ms. Wynne: I'm going to ask, once the motion is read, for a ruling of whether it's in order or not.

The Chair: Mr. Kormos has already asked for unanimous support, and that is what is in front of us. What he's arguing—and I have to admit I don't have the legal knowledge because I have never been faced with something like that. I don't know if he's technically or legally correct. That's why I'm asking the clerk to clarify for me whether Mr. Kormos is correct.

Ms. Wynne: He got unanimous consent to move the motion.

Mr. Kormos: Chair, if I may. I was very clear, and the record will show, that I acknowledged that the motion was not in order because it amended the root act—

The Chair: In your explanation.

Mr. Kormos: —and not the bill. That makes it technically out of order. That's why I sought unanimous consent. I sought unanimous consent to move an out-of-order motion and the committee of course can give unanimous consent. It then remained, because it's no longer open to the—I acknowledge it's out of order, but that was what the agreement was for; everybody agreed. If the Tories don't want it to occur, they can vote against it.

I suggest we move on. I got unanimous consent to move an out-of-order motion. That's very clear. I didn't hide my light under a bushel. This wasn't a surprise attack.

The Chair: I certainly heard what you said, and I have to agree with you. The only concern I have is that I don't believe everybody was clear what was happening because they were waiting for a motion to be introduced.

Ms. Wynne, any other comments?

Ms. Wynne: It still seems to me that there would be an opportunity to rule it out of order, but Mr. Kormos is saying not, so unless we have contrary advice—

Mr. Kormos: I'm in your hands, Chair.

The Chair: The motion is on the floor. Mr. Kormos asked for unanimous support and he got it., Therefore, you have the floor, Mr. Kormos, and I rely on the technical assistance considering that unfortunately there was some—OK, Mr. Kormos.

Mr. Kormos: I move that the bill be amended by adding the following section:

"1.1 Section 8 of the act is repealed and the following substituted:

"Certification of trade union

"8(1) On receiving an application for certification from a trade union, the board shall determine, as of the date on which the application is made and on the basis of the information provided in the application or the accompanying information mentioned in subsection 7(13),

"(a) what constitutes the bargaining unit; and

"(b) the percentage of employees in the bargaining unit who are members of the trade union.

"Information from employer

"(2) Within two days (excluding Saturdays, Sundays and holidays) after receiving a request from the board, the employer shall provide the board with,

"(a) the names of the employees in the bargaining unit proposed in the application, as of the date on which the application is made; and

"(b) if the employer gives the board a written description of the bargaining unit that the employer proposes under subsection 7(14), the names of the employees in that proposed bargaining unit, as of the date on which the application is made.

"Other evidence and submissions

"(3) Nothing in subsection (2) prevents the board from considering evidence and submissions relating to any allegation that sections 70, 72 or 76 have been contravened or that there has been fraud or misrepresentation if the board considers it appropriate to consider the evidence and submissions in making a decision under this section.

"Response to application

"(4) Upon receiving an application for certification, the board shall,

"(a) direct that a representation vote be taken, if it is satisfied that at least 40% but not more than 55% of the employees in the bargaining unit are members of the trade union on the date on which the application is made; and

"(b) direct that a representation vote be taken or certify the trade union as the bargaining agent of the employees in the bargaining unit, if it is satisfied that more than 55% of the employees in the bargaining unit are members of the trade union on the date on which the application is made.

"Hearing

"(5) The board may hold a hearing if it considers it necessary in order to make a decision whether to certify the trade union as the bargaining agent of the employees in the bargaining unit.

"Dismissal: Insufficient membership

"(6) Subject to section 11, the board shall not certify the trade union as the bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40% of the employees in the bargaining unit are members of the trade union on the date on which the application is made.

"Dismissal for contravention

"(7) If the trade union or person acting on behalf of the trade union contravenes this act and, as a result, the board is satisfied that the membership evidence provided in the application for certification or in the accompanying information mentioned in subsection 7(13) does not likely reflect the true wishes of the employees in the bargaining unit, the board may, on the application of an interested person, dismiss the application if no other remedy, including a representation vote, would be sufficient to counter the effects of the contravention.

"Bar to reapplying

"(8) If the board dismisses an application for certification under subsection (7), the board shall not consider another application for certification by the trade union as the bargaining agent for any employee who was in the bargaining unit proposed in the original application until the anniversary of the date of the dismissal.

"Exception

"(9) Despite subsection (8), the board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

"(a) the position of the employee at the time that the original application was made is different from his or her position at the time that the new application is made; and

"(b) the employee would not be in the bargaining unit proposed in the new application if he or she were still occupying the original position at the time that the new application is made.

"Representation vote

"(10) If the board directs that a representation vote be taken,

"(a) the vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the board makes the direction unless the board directs otherwise;

"(b) the vote shall be by ballots cast in a manner that individuals expressing their choice cannot be identified with the choice made; and

"(c) the board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until the time that the board directs.

"Response to representation vote

"(11) Subject to section 11, after a representation vote, the board,

"(a) shall certify the trade union as the bargaining agent of the employees in the bargaining unit if more than 50% of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union; and

"(b) shall not certify the trade union as the bargaining agent of the employees in the bargaining unit and shall dismiss the application for certification if 50% or fewer of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

"Transition

"(12) This section, as it read immediately before the day on which section 1.1 of the Labour Relations Statute Law Amendment Act, 2005, came into force, continues to apply to applications for certification as bargaining agent that a trade union makes to the board before that day."

This amendment has the effect of extending card-based certification to every worker in this province, as justice and fairness would dictate. People are familiar with the issues. I think a Wal-Mart worker's signature on a union card is as good as a building trade worker's signature and she shouldn't be treated any differently.

1620

The Chair: Thank you, Mr. Kormos. Is there any debate on the motion? There is no debate?

Mr. Kormos: Recorded vote, please.

The Chair: I will now put the question—

Mr. Arnott: Could I have an explanation for the purpose of the motion and what it does?

The Chair: Mr. Kormos, would you like to answer the question?

Mr. Arnott: Would you give us an explanation as to why you're moving this motion and what it would accomplish?

Mr. Kormos: I'm sorry; I just said that. I said it slowly, but I'll say it again. This extends card-based certification to all workers, not just those workers in the building trades, as the bill currently does. It basically restores the card-based certification regime as we knew it before Bill 7.

Ms. Wynne: I just want to be clear that the reason I didn't object to the motion being read was that I thought it was fine for it to be read in, but then it could be ruled out of order. My understanding is that this motion is outside the scope of the possibility for amendment, and so we'll not be supporting it.

The Chair: That is why I ruled the way I did, even if we didn't go through the formalities. I thank you for that.

At this point, I will now put the question.

Mr. Kormos: Recorded vote, please.

The Chair: Shall the motion carry? All those in—

Mr. Kim Craitor (Niagara Falls): Mr. Chair, I have a question.

The Chair: So we are back in debate.

Mr. Craitor: I'm curious. Let's just say it passes. What happens if it's out of order?

The Chair: Sorry?

Mr. Craitor: If it's out of order, which you said it is—

The Chair: The committee has the power to overrule.

Mr. Craitor: If it's outside the committee, then where does it go?

The Chair: If it passes, it passes. You see, I as the Chair—

Interjection: It amends the Labour Relations Act.

The Chair: It amends the amendment.

Mr. Kormos: It becomes part of the bill.

Mr. Craitor: So it does amend it.

The Chair: Yes, of course. The Chair has the power to overrule, which I was going to do. Because he asked for a vote and the majority supported—anyway, now we have to vote on the matter. It's a recorded vote.

Ayes

Kormos.

Nays

Arnott, Craitor, Flynn, Leal, Ramal, Witmer, Wynne.

The Chair: The amendment does not carry.

We will move to the next section, section 2. It's page 3, I believe. It's a motion by Ms. Witmer.

Mrs. Witmer: I move that section 11 of the Labour Relations Act, 1995, as set out in section 2 of the bill, be struck out and the following substituted:

"Remedy if contravention by employer, etc.

"11(1) Subsection (2) applies where an employer, an employers' organization or a person acting at the request of an employer or an employers' organization contravenes this act and, as a result,

"(a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or

"(b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

"Power of board

"(2) In the circumstances described in clause (1)(a), on the application of the trade union, the board may,

"(a) order that another representation vote be taken and do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit; or

"(b) certify the trade union as the bargaining agent of the employees in the bargaining unit that the board determines could be appropriate for collective bargaining, but only if a quorum of the board unanimously agrees that,

"(i) the contraventions mentioned in subsection (1) are egregious, as described in subsection (5), and

"(ii) no other remedy would be sufficient to counter the effects of the contraventions.

"Non-application of ss. 110(11) and (14)

"(3) Subsections 110(11) (majority) and (14) (chair or vice-chair sitting alone) do not apply to a decision under clause (2)(b).

"Power of board

"(4) In the circumstances described in clause (1)(b), on the application of the trade union, the board may,

"(a) order that a representation vote be taken; and

"(b) do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit, but only if the board is satisfied that the contraventions mentioned in subsection (1) are egregious, as described in subsection (7).

"Same

"(5) An order under subsection (2) or (4) may be made despite section 8.1 or subsection 10(2).

"Considerations

"(6) On an application made under this section, the board may consider,

"(a) the results of a previous representation vote; and

"(b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

"Meaning of 'egregious'

"(7) For the purposes of subclause (2)(b)(i) and clause (4)(b), contraventions are egregious if they include or consist of,

"(a) an act or threat of physical violence against an employee or his or her relative;

"(b) termination of an employee if,

"(i) the board determines that the termination is contrary to the act, and

"(ii) the employer was aware, at the time of the termination, that the employee was authorized to act as an inside organizer on behalf of the trade union; or

"(c) a breach of an order made by the board under this section."

This amendment would ensure that the legislation very clearly reflects what the government says are its intentions, which are that the remedial or punitive certification would only—and I stress this—would only be used in the worst cases, and as a last resort. Specifically, the amendments that I have just put before you would set out the specific types of conduct that would attract remedial or punitive certification. It would also provide that a full three-member panel of the board must agree to remedial or punitive certification before it can be ordered. Thirdly, it would ensure in every case that employees are given at least one opportunity to cast a secret ballot vote free from

any pressure, and that they would be given the opportunity to express their views in a democratic manner.

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: I can't support this amendment. It's far too restrictive with respect to the board's discretion around remedial certification, amongst other things. We heard enough horror stories from workers involved in union organizing efforts about the fact that Wal-Mart and other big bosses can hire lawyers until the cows come home; they've got huge resources available for that. Lawyers will weave their way through the technicalities of legislation in an effort to find means to intimidate workers. In my view, this legislation has to, when it restores remedial certification, restore it in a meaningful way. This amendment detracts from any meaningful remedial certification, along with the new element—let's understand that—of remedial decertification.

Mr. Jeff Leal (Peterborough): I would be concerned that this amendment does water down the potential remedial power that the Ontario Labour Relations Board would have, because one of the things that I take from the committee hearings is the horror stories with regard to activities surrounding the organization of bringing a union to an employer to start the very legitimate collective bargaining process in order to get a contract. The amendments that we have proposed to Bill 144 bring back a reasonable balance to labour relations in the province of Ontario, and I don't think we should step back and water down the remedial power that we believe should be put back into the framework of labour relations in Ontario. So I won't be supporting the amendment.

Mr. Arnott: I would suggest that this particular amendment is a friendly amendment to the bill because it allows government members to consider supporting it to put flesh on the bones of the commitment that they made. The government made a commitment that remedial or punitive certification would—I think the words were "would only be used as a last resort." This ensures that in fact that commitment will be honoured, and it also ensures that a three-person panel will make a decision, which is a very important decision for any company that's being organized or any union that is attempting to organize a company. So one person on the board isn't going to be making an arbitrary decision; a full three-person panel would make that decision. I think that because of the seriousness of the decision the board would face, I think it would ensure that better decisions would be made if there were three on the panel, as opposed to the potential arbitrariness of one person making the decision. Consequently, I would support this motion.

Mr. Flynn: When you look at the policy objective of the proposed legislation, I think that what we're trying to do is to deter both employer and union misconduct during the process. It seems to me that if we were going to handcuff the hands of the board in this manner, we wouldn't be achieving that policy objective.

I also note that the amendment does not talk to union misconduct, should that occur, so in supporting the amendment you would have a very unbalanced piece of legislation. You would have one set of rules applying to employers and a different set of rules applying to the union or the bargaining agent.

For those reasons, I won't be supporting the motion.

1630

Ms. Wynne: There's just one final comment I'd like to make. If for no other reason, the definition of "egregious" seems to me to be woefully inadequate. I think it's pretty naive to suggest that an action only becomes egregious when there's "an act or threat of physical violence." We've heard lots of evidence that psychological or emotional violence can be done in a number of ways. So I certainly won't be supporting this amendment.

The Chair: Is there any further debate? If there is no further debate—

Mr. Kormos: Recorded vote, please.

The Chair: I will now put the question. A recorded vote. Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The amendment does not carry.

Shall section 2 carry?

Mr. Kormos: Recorded vote.

The Chair: A recorded vote for section 2.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 2 carries.

Section 3, page 4.

Mrs. Witmer: This is section 3 of the bill. We recommend voting against section 3 of the bill, subsections 12(1) and (3) of the Labour Relations Act, 1995. Do you want me to read the rest?

The Chair: As you please. It's clear what you're asking. I'm just waiting to see if there is any debate.

Mrs. Witmer: I guess this is consequential, as section 3 would amend subsections 12(1) and (3), would substitute section 128.1 for other various sections and would allow for application for certification without a worker's fundamental right to a secret ballot vote. Obviously, we cannot support the initiatives of this government to strip workers of their opportunity to a secret ballot vote.

The Chair: Are there any comments on the recommendation? Any debate? Therefore, I'm going to take a vote on the section.

Mr. Arnott: Recorded vote.

The Chair: Shall section 3 carry? A recorded vote.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Carried.

The next one is page 5. Again, I have some difficulty with this section. Could I have a mover?

Mrs. Witmer: I move that the bill be amended by adding the following section:

"3.1 The act is amended by adding the following section:

"Religious objections, employer

"52.1(1) Where the board is satisfied that an employer who is an individual objects to entering into collective agreements because of his or her religious conviction or belief, the board may issue a certificate of religious objection to the employer.

"Effect of certificate

"(2) An employer who holds a certificate of religious objection is not required to join any organization of employers.

"Same

"(3) A representative of a trade union is not entitled to enter an employer's premises to hold discussions with employees if,

"(a) the employer holds a certificate of religious objection

"(b) no more than 20 employees are employed at the premises; and

"(c) none of the employees who are employed at the premises are members of a trade union."

The Chair: Ms. Witmer, before any comments, if I may, I believe you have read the entire motion?

Mrs. Witmer: Yes, I have.

The Chair: As you know, it is an established principle of parliamentary procedure that an amendment is out of order if it is contrary to the principle of the bill as agreed to at second reading. In an amending bill, the scope of the bill has been interpreted to mean only those sections that the ministry or sponsor has chosen to amend. Second reading of the bill establishes the parameters of the bill that may be considered by a committee. Therefore, an amendment that deals with something beyond the scope of the bill as established at second reading is out of order.

I find that this amendment seeks to add a new section to the act that is beyond the scope of this bill and its amendments to the Labour Relations Act. I therefore find this amendment out of order.

With your blessing, I'll move to the next one. Thank you.

There is no section to be addressed here, and I guess we'll take a vote on 3.1.

The Clerk of the Committee: We don't need to.

The Chair: OK. We'll go then to section 4, which would be page 6. I'm sorry, there is no amendment to that one. Therefore, shall section 4 carry?

Mr. Kormos: Hold on, I have some debate.

The Chair: On section 4? Yes, Mr. Kormos.

Mr. Kormos: Sections 4 and 5 deal with the Bill 7 provisions that provided for decertification notice. I supported the repeal of the Bill 7 provisions that provide for compulsory posting of decertification notices. Unlike the Liberals, who felt comfortable with parts of Bill 7 but not all of it, I opposed all of Bill 7. It was none of you five, because of course you weren't here at the time, but your then colleagues in opposition embraced portions of Bill 7, and of course you maintain that tradition today with your continual denial to Wal-Mart workers of the right to card-based certification.

Look, if any of you have been in a workplace and seen the posters, they become magnets, from time to time, for some very crude anti-boss sentiments. They become a blog for disgruntled workers. These decertification notices, I'm convinced, became as much of a nuisance to the employer, because it was the central place for, "Foreman A is an ABC"—pick your choice. So I have no doubt that the vast majority of the workplaces that were unionized had no interest in putting up these darned posters anyway, because all it did was cause grief.

Of course, the corollary was—because the government was in a dilemma. I'm convinced of that, and I don't know if the Tories agree with me on this. The government was in a dilemma because with their purported balancing act—which is easy when the rope is only two feet off the floor and there's a net—they would have had to either repeal the decert notices or—catch this—put up certification notices.

Although the building trades think they won a victory here, the real victors are the Wal-Marts. Think about it. The real winners are the Wal-Mart bosses. The decertification notice means a lot less in a unionized workplace because unions inherently educate their workers. Are there unhappy members of unions? Of course there are. We've talked to them here. Heck, ask any union business agent; he or she can provide you with a long list of disgruntled union members, people who don't feel the union has done them right on this issue or that issue, what have you. That's not unusual. But union members are educated. They know—let me put it this way: More union members know about decertification than non-union members know about how to certify. That's the obvious thing.

I'm convinced that the government here wasn't persuaded by Wayne Samuelson, no matter how hard he tried, that the decert notices were silly and useless and unfair, but it was Wal-Mart that said, "No, please, before you start compelling us to put up certification notices in many languages, let's say, we're ready to agree that you should take down the decert notices."

The decert notices were silly, didn't work. I'm not aware of any decert notice resulting in a move or a drive to decertify a union. From time to time, there are decertifications of unions. I know that. I'm not trying to gild the lily or paint the lily. So I support sections 4 and 5, and will be pleased to consider the amendment by the Conservatives to section 5 when that happens.

1640

The Chair: Is there any further debate on section 4? If there is no debate on section 4, shall section 4 carry? Those in favour? Those against? Section 4 carries.

We go to section 5, page 6.

Mrs. Witmer: I move that section 63.1 of the Labour Relations Act, 1995, as set out in section 5 of the bill, be struck out and the following substituted:

"Saving

"63.1 An employer or person acting on behalf of an employer shall not be found to have initiated an application under section 63 or to have contravened this act by reason only that, after the coming into force of section 5 of the Labour Relations Statute Law Amendment Act, 2004, the employer or person continues to do anything that was required by subsection (4) of this section, as it read immediately before the coming into force of section 5 of the Labour Relations Statute Law Amendment Act, 2004."

I believe this amendment is very important. I hope the government will give serious consideration to this one. I recognize that so far they have not given any consideration to any amendments that have been introduced. What it tries to do is ensure that, so long as the communications are not intimidating or coercive, nothing stands in the way of employees being informed about all of their legal rights under the Labour Relations Act.

Bill 144, as it is currently drafted by the government, means that an employer can be found to have violated the act if it fails to remove the how-to-decertify poster from its workplace within 30 days of the new act coming into force. Our concern is not so much that the poster be removed, but that an employer can be found to have committed an illegal act simply by informing his or her employees about their rights under the act.

For a government that prides itself on and talks a lot about democracy and the opportunity to make sure that people are informed of their rights and have the opportunity to participate, not only are they proposing to eliminate the secret ballot vote, which would take away that one right we all cherish in this country and in countries throughout the world, but they are also going to take away the right of an employer to free speech. That is certainly very concerning.

The Chair: Is there any debate?

Mr. Flynn: I think it's a little unfair to say that the amendments aren't being considered. The amendments are being considered. They aren't being supported, would be a better way of putting it, but we certainly have considered them.

This is quite reasonable, I think. What it's saying is that 30 days after the passage of the proposed legislation, all employers in the province of Ontario would be expected to have removed the decertification posters. It's a part of the history of labour legislation in this province, where something was done and it didn't really have any meaningful effect either way. It was almost like it was done to be vindictive or out of spite. It was done for some reason that I just can't understand.

Both employers and employees seem to have come forward and said that this is something that simply poisons the environment, and they don't need them. They're not doing any good; I don't know whether they're doing any harm or not. Mr. Kormos claims that it hasn't led to any decertification drives. I agree with him. I have no reason to believe that he's not telling the truth in that regard. So it's just an irritant that we can get rid of, and this legislation proposes to do just that. It's quite reasonable. Thirty days to take down a piece of paper is pretty reasonable, pretty generous.

Mr. Kormos: I'd invite the workers in those workplaces to facilitate the removal of those posters. I suspect there'll be lineups; there'll be lotteries. They'll have little bets going about how long the poster lasts. At what hour will that poster get the final bit of defacement or graffiti? There'll be all sorts of wonderful things happening to these posters.

Mr. Arnott: I was just thinking about what the government would say if someone said, "You can't put up the Charter of Rights and Freedoms on the wall in the school because we don't want people to know about their rights and freedoms. We don't want them to be informed of their rights and freedoms." This is what this bill is attempting to do, to ensure that workers know about their legal rights under the law.

Why the government would be opposed to that befuddles me completely. I can't understand why they would assume that everybody knows all the provisions of the Labour Relations Act, that they don't need information and that there's no need to inform them of their rights under the law. Yet, if the government members vote this down, that's exactly what they're saying.

The Chair: Any further debate? If there's none, I will now put the question.

Mrs. Witmer: Recorded vote.

The Chair: Shall the motion carry? A recorded vote.

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

I will now take a vote on section 5. Shall section 5 carry? Those in favour of section 5? Those opposed? The section carries.

Section 6. Comments?

Mr. Kormos: Very briefly. I remember when the then Minister of Labour launched this campaign about union goons, big fat union bosses and high-priced union thug-boss-leader people, women and men. First of all, the trade unionists I know vote on budgets at their annual conventions, and there's very little secret around what various members of their staff—business agents, union presidents, women and men—make.

The second observation was, when we started to see—

Mr. Flynn: Chair, on a point of order: I'm enjoying what Mr. Kormos is saying, but could you tell me what we're speaking to? Are we speaking to an amendment?

The Chair: It's section 6.

Mr. Kormos: We're speaking to a section of your bill. This is your bill, Mr. Flynn.

The Chair: Please. There was a question, and I'll be happy to answer: Section 6.

Mr. Flynn: Thank you very much.

The Chair: Mr. Kormos, you have the floor.

Mr. Kormos: I'm being very clear. Section 6 of your bill, as you know, repeals salary disclosure. I'm surprised you didn't know that, because you seem to have somehow lost the train of thought.

Mr. Flynn: I knew that. I just wasn't following you.

Mr. Kormos: Well, the other folks didn't have any problem—

The Chair: Mr. Kormos, talk to me, please. I enjoy your company in this discussion.

Mr. Kormos: Other folks didn't have any trouble at all.

What I learned, and what most people learned, is that most union presidents were making less money than some of the lawyer staff and other people who provide the real support, the real backup, for those union organizations. If anything, it's like that TV ad about putting a value on something. Buzz Hargrove, Leah Casselman and Fraser at the negotiating table—I say priceless. You're talking about some of the best and most effective negotiators in this country and in our lifetimes. If I'm a worker in a factory and I've got big corporate bosses ready to gouge me every step of the way, I want the best possible people doing my negotiating for me. I think, by and large, workers are well served by their labour leaders.

The provision to disclose sums—the government of the day thought it was going to embarrass these union leaders. It didn't. None of the union members were shocked or surprised, because they all knew anyway. Quite frankly, they have regard for the incredible talents of that union leadership.

When we were in Kitchener especially, I was impressed with Ms. Kelly, for instance, who made a submission as the executive assistant to the president of Local 6 of the Steelworkers. I was impressed by some of the young building trades leaders. Mark Ellerker, who's here today, was joined by several others. I was overjoyed at seeing bright, articulate, capable, energetic, committed, progressive trade unionists in roles of leadership in the trade union movement, both building trades, industrial and public sector. I don't begrudge them a penny of their paycheques, with their 80-hour workweeks and families who suffer the short end of the stick—if they dare risk having a family while doing that kind of work.

1650

The Chair: Is there any further debate on section 6?

Mr. Craitor: I have to make a comment. Having been on strike three times myself, I remember those days quite clearly. I also remember the members, when I was a local president, and the frustrations we used to have when our negotiators kept getting paid but we were out there picketing. I remember blocking the traffic on the Rainbow Bridge with one of the locals I belonged to. It's kind of nice to know what they're getting, because I tell you, as a member, we didn't know. Many times we didn't know, Peter, what the executives were making.

Mr. Kormos: So you're not going to support—

Mr. Craitor: I'm just sharing with you. I didn't say anything when you spoke. There is nothing wrong with that. Anyway, I just thought I'd mention it.

The Chair: Are there any further comments? Mr. Kormos, back to you on section 6 only, please.

Mr. Kormos: I want to be very clear that section 6 repeals the mandatory disclosure of trade union leaders' salaries, so it will be interesting to see how Craitor comes down on this one. He'll demonstrate how balanced he can be: He'll vote against the section.

The Chair: Thank you all. I think we're ready for the vote.

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote. Shall section 6 carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The section carries.

We'll move to section 7. It's pages 7 and 7(a).

Mrs. Witmer: I move that section 7 of the bill be struck out and the following substituted:

"7 Section 98 of the act, as amended by the Statutes of Ontario, 1998, chapter 8, section 10, is repealed and the following substituted:

"Board power re interim orders

"98(1) On application in a pending proceeding, the board may,

"(a) make interim orders concerning procedural matters on such terms as it considers appropriate; and

"(b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate.

"Same

"(2) The board may exercise its power under clause (1)(b) only if the board determines that all of the following conditions are met:

"1. The applicant establishes that the circumstances giving rise to the pending proceeding occurred at a time when the applicant was actively in direct contact with employees of the employer in an effort to organize them and that the employer was aware of the effort.

"2. There is a serious issue to be decided in the pending proceeding.

"3. The interim relief is necessary to prevent irreparable harm.

"4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.

"Same

"(3) In its determinations under paragraphs 3 (irreparable harm) and 4 (balance of harm) of subsection (2), the board shall not consider financial harm if it could be adequately compensated after a decision on the merits in the pending proceeding.

"Same

"(4) The board shall not exercise its powers under clause (1)(b) if it appears to the board that the termination was unrelated to the exercise of rights under the act by an employee.

"Same

"(5) Despite subsection 96(5), in an application under this section, the burden of proof lies on the applicant.

"Same

"(6) With respect to the board, the power to make interim orders under this section applies instead of the power under subsection 16.1(1) of the Statutory Powers Procedure Act.

"Transition

"(7) This section applies only in respect of a termination that occurred on or after the day section 7 of the Labour Relations Statute Law Amendment Act, 2005, comes into force.

"Same

"(8) This section, as it read immediately before the day section 7 of the Labour Relations Statute Law Amendment Act, 2005, came into force, continues to apply in respect of events that occurred before that date."

What we are trying to do here—as you know, the legislation as currently written would allow the labour board to change workplace practices, terms and conditions of employment or reinstate a terminated employee before any complaint about alleged employer wrongdoing had been heard or any type of decision made. If the government is determined, as they appear to be, to expand the labour board's powers in this manner, we believe that those powers should be limited only—I stress the word "only"—to reinstating employees terminated during an active union organizing campaign, and they should be used only where the union has proven that no other remedy, including monetary compensation at the end of the hearing, will suffice.

Mr. Kormos: Again, I understand the motivation for this amendment; I don't support it. I think the restoration of meaningful powers for the board to make interim orders is important. We heard from more than one worker about how you can dismiss a worker, and that will immediately have the proverbial chilling effect on any other number of remaining workers, even if that worker, at some point down the road, is reinstated.

Wal-Mart workers are going to have a hard enough time organizing, with this government's refusal to give them card-based certification. They don't need even more hurdles put in front of them. I want to give all unorganized workers as many breaks as we can. The government, as I said, has created a huge hurdle for the Wal-Mart workers of Ontario by not giving them card-based certification. Let's give them at least a labour relations board that can create some interim orders and get people back to work who have been fired because they've been involved with a union.

Mr. Flynn: I think the interim powers we are proposing in this case are very well balanced and very well thought out. They're already limited to cases where the board determines that a number of very specific conditions have been met. You'd have to be satisfied, for example, that the event in question occurred during an organizing campaign, that there was a serious issue to be decided by the board as a result of this event, that the interim order that would be issued was actually necessary to prevent some sort of irreparable harm or to achieve some other significant labour relations objective, and that some harm would occur as a result of not granting the order. It's very specific. The board, under the proposed legislation, has the power to respond to the misconduct, should it be deemed necessary, in a meaningful and balanced way.

The Chair: Any further debate on the motion? If there is none, I will ask for—

Mr. Arnott: Recorded vote.

The Chair: A recorded vote.

Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The amendment does not carry. We'll take a vote on section 7.

Mr. Kormos: A recorded vote, please.

The Chair: A recorded vote.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 7 carries.

Section 7.1: Mrs. Witmer, you can introduce the motion, or I can deal with it before you do so.

Mr. Flynn: Mr. Chair, on a point of order, just so we all understand the process: My understanding is that there's some question as to whether this motion is in order. I would ask you to rule on that right now so we know what we're dealing with.

The Chair: For all the members, let's go over it again. I was instructed by the clerk last motion, when we dealt with a matter, that procedure requires that the mover reads the motion into the record and then the ruling comes. That is what we tried to do earlier with Mr. Kormos, but what Mr. Kormos did, as I recall, was that

he acknowledged what I was going to do and asked—unfortunately, at that time, some people may have entered into a different discussion, and he was able to do what he did. Having said that, do you still have a question?

Mr. Flynn: Yes. Just so I understand, then, the motion will be read and you will rule whether it's in order. If you rule it's in order, we will deal with it; if you rule it's out of order, it stops.

The Chair: Exactly. But they can still ask for unanimous support. Any of you can ask. If that's the case, then the floor is again open for it.

Therefore, Mrs. Witmer, you have the floor if you choose.

Mrs. Witmer: I do. I believe every one of the amendments that we are bringing forward is extremely important. I would just say that there's a lot of concern about this legislation. It will have an impact on job creation and the economy in this province.

1700

I move that the bill be amended by adding the following section:

"7.1 Section 125 of the act is amended by adding the following clause:

"(j.1) prescribing classes of employers for the purposes of the definition of 'non-construction employer' in subsection 126(1)."

The Chair: This amendment seeks to amend a section of the Labour Relations Act that has not been opened by the amending bill, Bill 144. I therefore find this amendment out of order. With everybody's support, we'll move on to the next one. There is no vote to be taken, of course; there is no section. There is no section 7.1; there is now section 7.2. Again, I ask the mover to introduce her or his motion.

Mrs. Witmer: I move that the bill be amended by adding the following section:

"7.2 The definition of 'non–construction employer' in subsection 126(1) of the Labour Relations Act, 1995, is repealed and the following substituted:

"'non-construction employer' means,

"(a) an employer whose primary business is not in the construction sector, including without limitation a municipality, a school board, or another government organization or publicly funded organization, or

"(b) an employer belonging to a prescribed class of employers."

The explanation is that there are currently—

The Chair: Mrs. Witmer, you read the motion. Let me rule on the matter. I appreciate what you want to do, but I don't think it's possible. Basically, it's the same ruling as before. This amendment seeks to amend a section of the Labour Relations Act that has not been opened by the amending bill, Bill 144. I therefore find this amendment out of order, and there is no more discussion on the matter.

We'll move on to the next section, section 8. The floor is again yours, Mrs. Witmer, with page 10.

Mrs. Witmer: We recommend voting against section 8 of the bill, section 128.1 of Labour Relations Act, 1995.

The Chair: Thank you for your recommendation. Is there any debate on the recommendation?

Mr. Kormos: This of course is the restoration of card-based certification for workers in the building trades. By virtue of it being section 128.1, if you take a look at the Labour Relations Act, you see that commencing with section 126 of the Labour Relations Act you are dealing with the construction industry, as defined. That doesn't call for any debate around that at this point. It's a pretty well-known, pretty common accomplishment.

Folks know that I am displeased, incredibly displeased and concerned, about the denial of card-based certification to the vast majority of workers in this province. New Democrats have been clear from the get-go. We were clear when we supported card-based certification as a government. We supported it when it was introduced by Conservative governments, as CCFers, back with Leslie Frost as Premier, and by subsequent governments led by people like John Robarts, Bill Davis, Frank Miller and even David Peterson.

We fought Bill 7 tooth and nail. We did. We opposed every single element of Bill 7. There isn't a sentence, there isn't a punctuation mark in that bill that New Democrats supported. I can't speak for the Liberals in this regard, because there was a whole lot in Bill 7 that the Liberals thought was just hunky-dory, and so be it. They'll have to explain to their own grandchildren why they would have done that. But I've also been very clear that New Democrats don't begrudge any worker the right to card-based certification.

I'm going to be direct and say that I am supporting this amendment. This is an amendment to the construction industry portion of the Ontario Labour Relations Act. I'll have more to say about the whole bill, Bill 144, as we get closer to the end of it. But I'm going to be supporting the amendment which creates the new section 128.1, because New Democrats have never suggested that building trades shouldn't have card-based certification. Our position has been that everybody—every worker—should have card-based certification, because if one worker's signature is good enough for certification, by God, another worker's signature should be good enough too.

Mrs. Witmer: I think it's quite obvious that our party—and I know we speak on behalf of many individuals in the province of Ontario and certainly employers as well—is gravely concerned about the return of card-based certification and the opportunity that an employee loses to secretly make the decision whether he or she wishes to join a union.

I know it has been said, I guess by Mr. Kormos, that there is employer intimidation. Regrettably, from the phone calls, letters and e-mails that I have received, we also know that there is intimidation and there is harassment of employees as far as their being forced to sign a card. This intimidation happens outside of the workplace, in the workplace, or they are even followed to their

homes. I just find it unbelievable that this government, which continues to speak about democracy, makes a mockery of democracy and the right to a secret ballot vote for each and every employee in the province of Ontario. It's very inconsistent. I can't believe that they would think it's OK to have card-based certification for one group of people and not for the other. The whole thing leads me to ask the question, why is one group of employees being favoured and not the rest?

Mr. Kormos: On a point of order, if I may: Here we are debating section 8, and we've got three government motions and two NDP motions.

The Chair: What's on the floor for debate is the notice that Mrs. Witmer has given. Unfortunately, as usual, we tend to get into it a little longer or further. I remind all of you, if we can stick to that, then we'll deal with each section.

Properly so, the clerk has also reminded me that at the end of all this, we have an opportunity again to comment on the overall section. Maybe that's where we should keep the overall comments.

Mr. Flynn had asked to speak before Mrs. Witmer. If you wish to speak, fine; otherwise, we'll move to the next—

Mr. Flynn: I think we're trying to promote individual choice, balance and fairness in this. Somebody asked, "Why should you extend card-based certification to the construction industry? What's the reason for it?" I think if you look at things like project work, a mobile workforce, time sensitivity of jobs, that type of thing, there are some very valid reasons why you would extend card-based certification based on the distinct features the construction industry has.

The Chair: Thank you. Can we move to you again, Mr. Flynn, page 11?

Mr. Flynn: I move that subsection 128.1(1) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be struck out and the following substituted:

"Application for certification without a vote

"Election

"(1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8.

"Notice to board and employer

"(1.1) The trade union shall give written notice of the election,

"(a) to the board, on the date the trade union files the application; and

"(b) to the employer, on the date the trade union delivers a copy of the application to the employer."

If I can speak to that very briefly, this amendment would make the process under the card-based regime consistent with the vote regime and with the current OLRB practices and rules to date.

The Chair: Any debate on the amendment? I see no more debate. I will now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Page 12: Mr. Flynn again, please.

Mr. Flynn: I move that subsection 128.1(2) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by striking out "subsection (1)" and substituting "subsection (1.1)".

1710

The Chair: Any comments or further debate? If there is no debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Flynn, page 13.

Mr. Flynn: I move that subsection 128.1 of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by adding the following subsection:

"Determining bargaining unit and number of members

"(18.1) Section 128 applies with necessary modifications to determinations made under this section."

In supporting this motion, this amendment would ensure that the labour relations board can continue its current practices with respect to certification in the construction industry. It would also ensure that the board could treat card-based applications and vote-based applications in a consistent manner. They're long-standing practices.

The Chair: Any debate? If there's none, I shall now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Mr. Kormos, page 13.1.

Mr. Kormos: I move that section 128.1 of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by adding the following subsections:

"Certified trades

"(21.1) For the purposes of this section, if a bargaining unit consists of employees who work in a certified trade under the Trades Qualification and Apprenticeship Act, an employee who is not the holder of a subsisting certificate of qualification for the trade or apprenticeship in the trade,

"(a) shall not take part in a representation vote; and

"(b) shall not be considered in the board's determination of the percentage of employees in the bargaining unit who are members of a trade union."

This amendment is the result of submissions made to us in Kitchener by, amongst others, the Ontario Pipe Trades Council. I am advised that since the year 2000, after the Quadracon decision, the labour relations board stopped its long-time practice of only considering licensed apprentices and journeymen.

As everyone in this room knows or ought to know or does know, I'm sure, under the Trades Qualification and Apprenticeship Act, members of certain trades—pipe trades, electricians, plumbers, sheet metal workers, refrigeration and crane operators—must be licensed before they work on a building site. Ensuring qualifications is logical. It's all about public safety. No one wants the people putting water systems in a daycare or school to be untrained or unlicensed.

This amendment would remedy the current situation, which has allowed employers to stack certification votes with persons who are performing work illegally. They're

doing that work—they're called a plumber, electrician, sheet metal worker, refrigeration person or crane operator—but they're not licensed, so they're not legally working at that. They haven't met the standards. Clearly, there's an interest among employers who want to scuttle a union drive at the vote point in having these people stacking the deck.

This amendment would remedy the situation by ensuring that only licensed journeymen and apprentices with valid certification will be considered valid members of a union in a construction industry application that affected the mandatory—this only deals with mandatory certified trades. In other words, it's only in those workplaces where you have to have a licence before you can legally work there. I think it makes good common sense; it's a response to a very valid issue put forward by the building trades. It's one that I am very enthusiastic about.

It boggles my mind that it—I suggest that it was only oversight on the part of the government, when they were drafting this bill, that they didn't address this issue as well, because they've known about the issue since the year 2000. It wasn't under their watch, it was the previous government, but I'm confident it was only oversight on the part of the government. Am I fair in that observation, I say to Mr. Bentley's assistant?

The Chair: Mr. Kormos, talk to me, please.

Mr. Kormos: I say to Mr Bentley's assistant, Chair, I'm sure it was only oversight, that in fact Mr. Bentley's assistant is sitting here saying, "I wish we had put that amendment in, because the government doesn't want to appear to be backing down to something Kormos moved, because maybe that would be too radical," or something like that. After all, the government is far more comfortable with Tory policy than they are with NDP.

I ask the committee to consider this amendment as one which supports the broadest intent of the bill.

The Chair: Any further debate on this amendment?

Mr. Flynn: The issue is one that is worthy of consideration. When I think of the evidence that was brought forward by the various groups that attended the hearings, this is one that did stand out in my mind as well. The problem is, the motion as presented would create a significant inconsistency between card-based and representation vote processes within the act. The issue unfortunately, as presented in this context, is beyond the scope of the bill. Having said that, we understand that the policy considerations arising from this are complex and are worthy of further study and consideration. So within the confines of an amendment to this bill, I would say that it's unsuitable; as an issue, I think we're saying that it is worthy of consideration.

The Chair: Any further debate? I'll go back to Mr. Kormos.

Mr. Kormos: I think Mr. Flynn learned a new phrase today, "beyond the scope of this bill," and he wants to insert it into every sentence and every argument he makes. That phrase was used earlier when we talked about amendments not being in order because they don't address sections of the bill.

This very specifically addresses a section of the bill, as in your last three amendments, which were all amendments to what will be section 128.1, Mr. Flynn. It's very much talking about who is entitled to vote when a vote is called in a union organizing bid. That's what your section 128.1 is all about. This is so within the scope. This isn't just a bull's eye; this has got the eye, that one millimetre spot in the centre of the target, and this one drives it right home.

Perhaps we could deal with this in committee of the whole. I'd accept your commitment in that regard, if you assured me that the bill would be put into committee of the whole, and we can address this when it gets into the chamber.

The Chair: Any further debate? If there's none—

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote. Shall the motion carry?

Ayes

Craitor, Kormos.

Nays

Flynn, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Kormos, you're next; 13.2, please.

Mr. Kormos: The next amendment, 13.2, is now irrelevant because it referred to the new section 21.1 that would have been created by my previous amendment. So I withdraw it.

The Chair: I will go to Mr. Flynn; page 14, please.

Mr. Flynn: I move that clause 128.1(22)(a) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by striking out "subsections (1)" and substituting "subsections (1), (1.1)".

The Chair: Any debate on that amendment? If there's none, shall the motion carry? Carried.

Therefore, we are going to take a vote on the entire section 8, as amended.

Mr. Kormos: Recorded vote, please.

Mr. Arnott: Is there any opportunity for a quick discussion?

The Chair: Yes, of course. On the entire section?

Mr. Arnott: Yes. I would just again express my personal concern about this section and express support for Mrs. Witmer's statement earlier on section 8, that it's a real problem when the government is denying the secret ballot vote to many workers.

I'm sure all members of the committee over the last few days were watching television to see the Canadian veterans returning to Holland to participate in commemoration of Victory in Europe Day, or V-E Day. Certainly it was an overwhelmingly emotional thing for the veterans to return to Holland and receive the appreciation of the Dutch people. I saw some of it on television and had a chance to attend a Legion event in my own riding on Saturday.

What I'm trying to say is, that generation of Canadians, who fought a war and many of whom died, to some degree was fighting for the right of a secret ballot vote. Clearly, it's the position of our party that secret ballot votes should be the rule as opposed to the exception in terms of important decisions with respect to unions, whether or not the unions would be organized or taken away and that sort of thing.

I would ask all members of the committee to give serious consideration before they vote on this and pause one last time to think about the importance of the secret ballot vote and whether they want to vote against it in principle.

The Chair: I believe we are ready for the recorded vote.

Mr. Kormos: A recorded vote, and asking for a six-minute adjournment prior to the vote, pursuant to the standing orders.

The Chair: We will come back to vote six minutes from now.

The committee recessed from 1720 to 1726.

The Chair: We are going straight to a recorded vote unless there is any other debate. Shall section 8, as amended, carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 8, as amended, carries.

Shall section 9 carry? Those in favour? Those against? Section 9 carries.

Shall section 10 carry? Those in favour? Those against? Carried.

On section 11, instead of breaking it down, we shall go to the section. Are there any comments before we take a vote?

Mrs. Witmer: Yes. We are going to be voting against section 11 of the bill because it recognizes certification without a secret ballot vote.

The Chair: Any further debate?

Mr. Kormos: New Democrats are going to be supporting section 11 of the bill. It's remarkable, because what you've noticed is that the things Conservatives support when it comes to labour relations tend to be the things New Democrats oppose, and vice versa. But the Liberals embrace a whole lot of the Tory Bill 7 in that they maintain the denial of card certification to the vast majority of workers. New Democrats are clear on where they stand with respect to working women and men. We'll be supporting section 11.

The Chair: Is there any further debate? If not, I'll ask for a vote.

Mrs. Witmer: Recorded vote.

The Chair: A recorded vote. Shall section 11 carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal Wynne.

Nays

Arnott, Witmer.

The Chair: Section 11 carries.

We'll go to section 12; page 16, please.

Mrs. Witmer: I'm going to move that subsection 12(3) of the bill be struck out. This supports the fact that there would be certification without a secret ballot vote. Obviously, we believe that each person in this province should have the right to freely and secretly make a decision through the secret ballot process.

The Chair: Is there any debate on the motion? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Shall section 12 carry? Those in favour? Those opposed? The section carries.

Shall section 13 carry? Those in favour? Those opposed? Section 13 carries.

Shall section 14 carry? Those in favour? Those opposed? Carried.

Section 15, page 17, Mr. Flynn.

Mr. Flynn: I move that subsection 15(2) of the bill be amended by striking out "comes into force" and substituting, "is deemed to have come into force".

This amendment simply avoids a gap in the application of all the residential construction provisions.

The Chair: Any further debate? If there is none, I'll ask for a vote. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Shall section 15, as amended, carry? Those in favour? Those against? Carried.

Shall section 16 carry? Those in favour? Those against? Carried.

Shall the title of the bill carry? Those in favour? Those against? Carried.

Shall Bill 144, as amended, carry? Mr. Kormos.

Mr. Kormos: The New Democrats have been very consistent from the get-go around this bill. While we support, of course, the restoration of remedial certification, while we support, of course, the elimination of the silly requirement around decertification posters in unionized workplaces, while we support the restoration of powers to the Ontario Labour Relations Board to make interim orders, including returning people to their workplaces who have been fired during the course of a union bid, in the exercise of incredibly oppressive powers by an employer, and while we support card-based certification—oh, we support that so enthusiastically—we cannot attach our votes to a bill which denies the vast majority of workers in this province the right to organize themselves with card-based certification.

1730

The government is going to try, understandably, to argue that it's only because of the unique circumstances

of the labour workforce on a construction site, the peripatetic nature, if you will, of that workforce. The real issue, though, is whether the signature on the card is a valid way of determining whether or not a worker belongs to a union. I happen to think it is. Nobody from the government suggested that somehow they're being more liberal—dare I say it?—with the building trades in that they'll take a building trade worker's signature even though it's not quite as good as a so-called secret ballot. Nobody said that.

Every witness we heard from in the trade union movement—building trades, non-building trades—the building trades themselves didn't argue that they should have concessions made for them or somehow be given this extra little bit of oomph just because of the nature of the workplace. The fundamental argument was that a signature on a union card is rock solid, that it's as good as anything in terms of determining whether or not a person can and will belong to a union.

I've grappled with the argument that the government presents, because they've got to somehow justify this. Even the government members haven't suggested that a card-certification signature is somehow less competent or less complete than any other method, and obviously, the competing method is the so-called secret ballot. Nobody in the government has said that, because if they said that, then they would undermine themselves in terms of letting building trades workers sign a union card, so of course they can't say that.

To me, this is it in a nutshell as I've reflected on this. As I say, I know there are some folks in the building trades who somehow think they won a major victory with the government. I say that who really won the victory was the Wal-Marts of Ontario.

Mr. Ruprecht, come on in.

Mr. Tony Ruprecht (Davenport): I'm just looking for somebody.

The Chair: It's not Wal-Mart, I hope.

Mr. Kormos: The real victors here are the Wal-Marts. We didn't hear from a single representative of the construction industry who expressed any great concern about card certification, did we? There wasn't a single representative from employers in the construction industry who said, "Oh, Jeez, don't bring back card certification." Nobody from the construction industry said that, because the construction industry, I believe, has a pretty mature relationship with its workers. That's been the result of years of hard work on the part of the unions and some legislative prompting along way. We saw some of that over the course of the last few years. But, by goodness, we heard other people come forward and say, "Please, card certification for those little $9-an-hour workers is bad, very bad. It's going to send us to hell in a handbasket in short order."

I want to know how it is that for 50 years we've had card-based certification, and even after Bill 40, which was probably the most progressive labour legislation—well, not probably; it was, and God, the New Democrats took a beating for that one from the corporate world—did we see an orgy of union organizing? Quite frankly, no.

Like you, I come from communities where we've got little employers, medium-sized employers and big employers. We have some workplaces where there have been union drives as long as I can remember, with no success—and I'll argue, legitimately no success—because in those particular workplaces there isn't the appetite on the part of those workers for a union.

Quite frankly, where it happens most often is the Dofasco-Stelco scenario. It was those Stelco workers setting the bar for Dofasco. Dofasco workers probably should be paying union dues to somebody, because they're getting most of the benefits of a trade union without ever having had a trade union. In fact, it's a union town. Stelco workers—United Steelworkers, in that case—set the bar.

Similarly with some of the auto industry, we have some notorious non-union foreign manufacturers and assemblers here in the province, but it's the Big Three—CAW, Ford, General Motors and Chrysler—that set the bar.

I think a unionized workplace is a safer one, a stronger one, a more prosperous one. I think union towns are healthier and more prosperous. You folks have heard my comments about that.

I close with this: Make no mistake about it, I resent and I will challenge—I've heard about the efforts to try to drive a wedge between two strong sectors in the trade union movement, which I find very unfortunate, playing off building trades workers against other workers. Some of those unions may buy it, but most of those unions, if not all of them, understand that workers are successful when they work together in solidarity. While there may have been the briefest of wedges driven, it won't last long. There will be solidarity in that trade union movement, make no mistake about it.

I regret some of the lack of candour in how this legislative process has been presented to some of the trade union movement, in particular, the building trades. However, having said that, I'm confident that there isn't a unionized building trade worker in this province who doesn't understand exactly where the NDP is on this issue, that the NDP is squarely with them on the right to card-based certification but also believe so strongly that we can't deny other workers the same right, that we're not going to support a bill that denies those workers.

When you support a bill, you have to weigh these things. You have to say, "Do I agree with enough of the bill that I'm comfortable standing with the bill, or are there parts of the bill that I find so contentious that there isn't a snowball's chance in hell of me or the NDP lending their name to the bill?" Well, there isn't a snowball's chance in hell of the NDP supporting the bill, notwithstanding all of the things I've said and the support I've given on the record for section after section. There isn't a snowball's chance in Hades that New Democrats can or will support a bill that says to the vast majority of workers in this province that their signature isn't as good as a construction worker's. In fact, in my view, it's cynical and suspicious. Ms. Wynne tore into me for being

so cynical a couple of weeks ago when we were at an event. She said, "Oh, Peter, you're cynical." You're darn right I'm cynical. I've got a whole lot of years of foundation for that cynicism.

This is all about Wal-Mart. It's all about preventing workers from organizing. In the building trades, the employers didn't raise a single objection to building trade workers having card-based certification restored, but oh boy, we heard from the others.

I will not support the bill in its entirety, notwithstanding that I and New Democrats supported section after section, because of its denial of card-based certification to Wal-Mart workers and others of their kind.

Mr. Leal: I happen to think that Bill 144 and the amendments we've made bring a significant amount of balance back to the labour environment in Ontario, a balance between workers' rights and employers' rights.

The other thing I think is important is that we try to maintain Ontario's competitive position. We can talk about times 25 and 30 years ago, but let's just look at the manufacturing sector for a moment. We heard that the Conservatives supported card-based certification 25 or 30 years ago, and Liberals—it went through a long history—but over the last decades, from 1988 to today, after the free trade agreement was brought in, things changed dramatically in terms of investment decisions with regard to Ontario and its competitors. When you look south of the border—and I had a staff person check into it—with regard to the National Labor Relations Board in the United States, in the competitive jurisdictions with Ontario, New York, Michigan, Pennsylvania and Ohio all have vote-based certification in the manufacturing sector. Those are the areas Ontario competes with each and every day. We can have some discussion about the pros and cons of free trade, but one thing we know for sure is that it sort of reoriented investment decisions from an east-west axis to a north-south axis.

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So for me, to make sure that a labour bill allows Ontario to remain in that competitive position—when investments are being made in jurisdictions, they look at these kinds of situations to make sure they're going into a jurisdiction where investment opportunities and return on those investment opportunities are relatively the same. We know now that Toyota is looking for a significant investment in Ontario. I think it's key, as we move forward with this kind of legislation, that Ontario is able to maintain its competitive position.

I would argue, and we go back and forth, that there are some unique characteristics in the construction industry. I would say that the construction industry is more of a domestic issue, where you could have some different rules applying, as opposed to those sectors that are competing on a more international basis, on a north-south axis.

I've reviewed this. I think it brings balance back, and I'm prepared to support it.

Mrs. Witmer: I appreciate and respect Mr. Leal for his comments, but I would hasten to add that some of the legislation the Liberal government has been bringing forward, starting with changes to the 60-hour workweek, has created a tremendous amount of additional red tape for employers in this province. This particular piece of legislation, which also has a negative impact on job creation in the province, will do little to stimulate investment.

We've already received anecdotal information. I've personally heard from employers who are reconsidering their investment decisions here in Ontario. One is considering moving to Mexico. It employs about 300 people. I've heard of others who are looking to move to a more favourable province that has a better environment for job creation. I've talked to somebody else about moving to China.

I think we need to realize that if we continue to tilt this balance in a direction that does not create a favourable environment for investment, we're going back to 1990 to 1995, when we lost 10,000 jobs, instead of 1995 to 2003, when we saw the private sector create over one million new jobs.

I think this bill, in some respects, with some of the provisions permitting remedial certification and interim reinstatement etc. is going to unfairly disadvantage small businesses in Ontario. It's going to be very difficult for them when they're confronted by very large, well-resourced unions that understand the legislation. I think these two pieces of legislation together are really not going to be a stimulus to growth, prosperity and job creation.

Also I am concerned about the loss of the democratic secret ballot for employees and freedom of speech for employers.

I think it is regrettable that the government is not considering job creation and economic growth, because if you don't have economic growth and job creation, there's no money to pay for education or health. You can't continue to ask the federal government for more money.

Mr. Flynn: Chair, I'd like to thank you, and the staff too, for your conduct during the hearings and during the clause-by-clause today. I think all parties have presented their cases quite well and in ways that I think were to be anticipated at the start of the process, as we went through the proposed legislation. It's obvious some people think we have gone a little too far; some people obviously don't think we're going far enough.

I think it's important to be clear on just what is in the proposed legislation and what is not. It reinstates remedial certification and interim reinstatement. It gets rid of the decertification process, which was just a nuisance to everybody. It gets rid of the salary disclosure. Union members have access to that information, in any event. I think it brings back balance and fairness. It extends card-based certification to the construction sector because of some very unique traits of that sector. I understand that people would prefer we didn't go that far; I also understand that people would prefer that we go much further. It's a little bit like Goldilocks: Some think it's too hot; some think it's too cold. I happen to think it's just right. I think it's supportable.

At the end of the day, it's time to stand up. You can't be in favour of parts of the bill—I mean, you can if you want to be, but do you agree with getting rid of decertification posters? Do you agree with getting rid of salary disclosure? Do you agree that card-based certification should be extended to the construction sector? If you do, then the bill is eminently supportable. If you don't, that's an entirely different question. I think some people here have been honest and upfront about their non-support for those changes taking place, but you can't suck and blow. In my opinion, it's time to stand up for what you think. It's one thing to support various parts of the bill, but then at the end of the day say, "But because of that, I won't support any part of the bill."

There are some very positive things that I think are going to bring back a lot of balance, a lot of fairness. I think the job creation record of this government to date has been tremendous, something I expect to continue, something that I don't expect to be retarded at all by these proposed amendments. I think it's a very fair, very supportable, very progressive piece of legislation that deserves all our support.

The Chair: Do you still have comments, Mr. Kormos?

Mr. Kormos: Of course you think that. You're paid a whole lot of money to think that and to say it. That's fair enough, because you have restored balance and fairness for some workers. You see, all we're saying is that if you're going to restore balance and fairness, you've got to restore balance and fairness for all workers.

I have this irresistible urge to ask Mr. Leal, when the Hansard is printed, to please take a look at what he said, because knowing, as we do, that unionized workplaces are better-paid workplaces, that they're safer workplaces, that they are workplaces wherein they're more likely to have a pension and a benefits package, what you've said, Mr. Leal, is that we have to sacrifice those workers to be competitive. Implicit in your argument is that unionized workplaces may be better for workers, but by God, if we're going to be competitive with New York state and these other vote-only states, then we've got to be in line with them.

That's the trap of free trade. I'm sorry; we're never going to be able to compete with slave labour in China, and we shouldn't let slave labour in China—

Interjection.

Mr. Kormos: Well, they use prison labour for production. We should never let the standards of these other countries downgrade ours. We should be radical in calling upon our government to ensure the level playing field by enhancing the standards in these other countries.

I've got a feeling you're going to try to correct the "misinterpretation," as you're going to put it, that I put on your language, but I'd be careful, because you're liable—the spadework is getting so that you're hitting water pretty soon. When you suggest to someone that we should compete with low-wage economies—because when you say that you don't want to see unions, that means you don't want to see higher wages. I don't think we have to sacrifice our economy or sacrifice our workers and their families on the altar of the economy. I think a progressive government can do both.

In fact, if you talk about auto sector expansion, you're talking about auto sector expansion in a jurisdiction where the auto sector is highly unionized, with a pretty tough union, the CAW. So I think your comments are dangerous ones.

Mr. Leal: I was making the direct comparison because in those states we have the UAW, United Auto Workers, and we have the Steelworkers, who are formerly brothers and sisters, who have organized down there. They've accepted vote-based for their union organizing in those states, which are highly unionized. So I was just making the comparison of two unionized jurisdictions, Mr. Kormos.

The Chair: Ms. Wynne?

Ms. Wynne: The reason I support this legislation is that I do not support the argument that Ms. Witmer made. I really believe that remedial certification and the decertification posters—the moves we've made will help all workers. I believe in organized labour. I think that organized labour sets the bar. I completely agree with that. But I will not not support the bill because there's one piece that doesn't go as far as some people would like us to go. By the same token, I will not not support the bill because it doesn't go as far in the other direction.

I agree with Mr. Flynn that we're striking a balance. I think the point Mr. Leal is making is that the environment we're operating in is different than it was 50 years ago. That's a reality.

We're putting legislation in place that moves very far to protect workers in this province. I think it's a great shame that the NDP isn't going to be supporting this piece of legislation.

The Chair: I thank you. I think we've had quite a discussion. Are we ready to vote?

Shall Bill 144, as amended, carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote.

Ayes

Craitor, Flynn, Leal, Ramal, Wynne.

Nays

Arnott, Kormos, Witmer.

The Chair: This carries.

Shall I report the bill, as amended, to the House? Any comments? All in favour? Agreed. That carries.

I thank you very much for your participation. I'm sure we have done something positive. We'll leave the rest to the people. Thank you again.

The committee adjourned at 1750.

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