

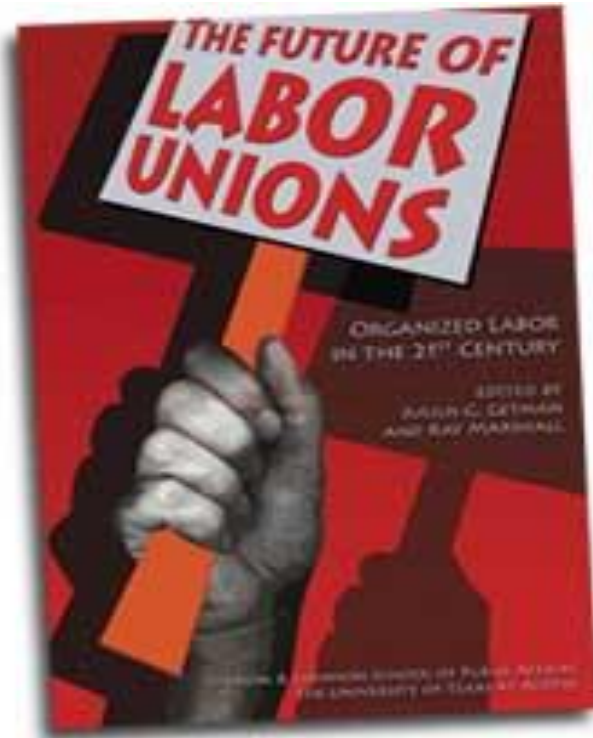


# Union Organizing: What is an Appropriate Bargaining Unit?

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# Union Organizing

- Labour Boards recognize that unionization is on the decline



# Union Organizing

- The bargaining unit is the group of employees that the Union is seeking to represent. The Labour Board determines whether the bargaining unit the Union has applied to represent is appropriate.
- In the non-construction industry, the *Trade Union Act* (“TUA”) requires that an automatic secret ballot representation vote be held within 3-5 days of the date the application is filed.
- In order for the Union to be ultimately successful (in the non-construction industry) a majority (50% plus 1) of the employees in bargaining unit who actually vote must have voted in favour of unionization.

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- The composition (i.e. the “ins” and “outs”) of the bargaining unit is important. The “ins” votes count.
- Unions often seek to represent as small (i.e. as few employees as possible) a bargaining unit as possible because this reduces the number of employees the union has to convince to support the union.



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- How does the Labour Board decide what is an appropriate bargaining unit?



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## Approach #1 – Community of Interest

- The TUA says that “the Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.”
- The Board does not consider the TUA to be exhaustive so in almost every “in and out” case it considers a number of factors.
- Community of interest is a malleable concept that can be easily manipulated.

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## Approach #2 – Serious Labour Relations Problem

- The Board says that the “sharp focus” on community of interest has dimmed.
- The Board’s focus is whether there is a serious labour relations problem: “does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis **without at the same time causing serious labour relations problems for the employer?**”
- Serious labour relations problem (e.g. fragment the workplace into a number of different bargaining units).
- The Labour distinguishes between employees who are “functionally integrated” (which results in inclusion) and employees who only have a “functional relationship” (which usually results in exclusion). It is difficult to tell the difference.



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**Regardless of Approach #1 or Approach #2, the Labour Board consistently cites the following statement with approval:**

*“Labour boards are more flexible in the application of the criteria on an initial or first application for a workplace. Here access to collective bargaining and deference to employee wishes as reflected by the certification application will be given considerable weight.”*



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**SECRET**

The employee wishes consideration is illogical because the success of the certification application is based upon the results of a secret ballot vote, and the results of the secret ballot vote will not be known until the results are counted. Therefore, how can the Board be influenced by employee wishes?

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Key Take Away:

**Take the necessary steps to avoid an application to the Labour Board so you never have to “fight” about bargaining unit appropriateness**





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