

# Global Workplace Law & Policy

## Permanently Logged Off

David Mangan (Maynooth University (Ireland)) · Tuesday, May 12th, 2020

### *Foodora Leaves Canada*

The [pandemic of 2020](#) is a demarcation point that will take some time to understand. In the midst of such profound changes to daily life, labour law remains one background to these challenges.

After its riders in the Canadian province of Ontario won a challenge to their union certification on 28 February 2020, Foodora reported on 29 April 2020 that it had closed its Canadian operations as of 11 May 2020;



Locked Bike

prompting a 1<sup>st</sup> of May protest from riders and its union, the Canadian Postal Workers Unions. The riders' union filed an [unfair labour practices complaint](#) with the Ontario Labour Relations Board (OLRB). The company also initiated bankruptcy proceedings with approximately \$4.7 (CAD) million in debts. ©David Mangan

### *Timing of the closure*

As with the freedom to associate (join a trade union), businesses also have a right to conduct their businesses (within the boundaries of the law) as they see best. And so, Foodora's decision to leave is a choice it has a right to make. Its decision, still, warrants some level of scrutiny when combined with the timing.

The announcement arose during the lockdown phase of the pandemic when most individuals had been selecting home delivery options for necessities such as food in order to adhere to [public health guidelines](#). Additionally, food delivery seemed to generate a competitive amount of income. [UberEats](#), as one example, takes a commission of between 15% and 30% on deliveries. Competitors charge between 10%

and 20% commission. UberEats, Door Dash, and Skip the Dishes have each engaged in reduced fees for local restaurants that qualify (Door Dash's offer is for restaurants with five or fewer locations). There seemed to be momentum in the industry at the time of Foodora's announcement.

### ***Foodora at the Ontario Labour Relations Board***

Foodora challenged the union certification of its riders on the (now well-known) basis that the riders were not employees, but independent contractors. The union argued that the riders were dependent contractors: [an application of a concept outlined in Professor Harry Arthurs' 1965 article](#); and a defined term in the provincial *Labour Relations Act 1995*. The Ontario Labour Relations Board [ruled against Foodora](#).

### ***Foodora elsewhere***

Foodora's decision in Canada contrasts with its conduct in other jurisdictions, for example Germany. According to a 2018 [study from the European University of Viadrina](#), Foodora riders in Berlin worked as employees (unlike competitor Deliveroo where riders were self-employed). Foodora Berlin employees were entitled to the following: pay at the rate of €9/hour (where the minimum wage had been €8.84/hour); those employed for more than one year earned an extra 50 cents/hour; 25 cents/hour for bike repairs. There were also work options ranging from: mini-jobs which paid approximately €450/month; midi-jobs for 16 hours/week; and full-time contracts of 30 hours/week. Shifts cannot be declined and if this happened an employee may receive up to three strikes (one for each missed shift) at which time Foodora could have dismissed them.

At the Ontario Labour Relations Board, Foodora contended the riders were independent contractors (as stated in the contract signed by the parties). In terms of remuneration, couriers typically received \$4.50/order as well as \$1/km between pick up and drop off (as well as tips or other incentives). The Board observed that couriers 'may request and negotiate adjustments to kilometre calculations to reflect route challenges or changes, changes to drop off locations, and similar issues.' There were no submissions that riders were provided with any other payments.

### ***A diversified role for unions and their membership***

The negativity towards unions persists into the 21<sup>st</sup> century. Unionisation rates have been at low levels for several decades, as compared to their heyday. Their impact has been muted as compared to those very different times. However, unions have not worked exclusively in the domain of industrial actions (such as strikes), collective agreements, and workplace rights.

The [Ontario Teachers' Pension Plan \(OTPP\)](#) stands out as one example of how the pooling of union membership resources can be used in ways other than the stereotype of trade unions. OTTP was created as an independent entity on 1 January 1990 by the Ontario teachers unions. This change arose in response to concerns over how the plan had been managed. With board members appointed by the government and the teachers unions, OTTP is administered by a full-time staff with offices in Canada, the

UK and Hong Kong. Teacher members who are currently working contribute approximately 10.5% to 12.5% of their annual salary to this plan. As of 31 December 2019, OTPP had \$207.4 (CAD) billion in assets. While some investments have incurred controversy (such as tobacco companies), its portfolio remains diversified. OTPP is not the sole example of a pooling of workers' pension contributions.

### ***A longer story***

Gig work has been a contentious area for paid engagement. Foodora would have been familiar with [the developing jurisprudence around the world regarding the employment status of Uber drivers](#). The proximity of time between the loss on the Ontario Labour Relations Board case and initiating bankruptcy proceedings as well as the timing of cessation of operations should draw critical attention. Foodora's departure from Canada should not be classified simply as another gig work story. Instead, it is also about a persistent view of trade unions that predates the platform economy and efforts to avoid unionisation (as the extreme facts in *United Steelworkers of America v Baron Metal Industries Inc* illustrate).

***The Regulating for Globalization Blog is closely following the impact of COVID-19 on the labour, trade and European law communities, both practically and substantively. We wish our global readers continued health and success during this difficult time. All relevant coverage can be found [here](#).***

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