

## **SUBMISSION to the Alberta MLA Review Committee on the Alberta Labour Relations Code**

September 12, 2002

Edmonton, Alberta

### **Preface**

The Alberta Federation of Labour (AFL) is pleased to have this opportunity to make a submission to the MLA Committee reviewing the Labour Relations Code (the Code). As you may already know, the AFL is the largest labour central in Alberta, representing 110,000 workers from 43 affiliated unions. Our affiliates are organized in 250 locals, with members in virtually every town and city in Alberta. Our members can be found working in all sectors of the Alberta economy - from hospitals and schools to the oil and gas industry.

We understand that the Committee is charged with making a recommendation to the Minister in charge of Alberta Human Resources and Employment regarding the need to open up portions of the Code for review. We believe that, in the light of recent court decisions, it will be necessary to review the portions of the law dealing with the rights of agricultural workers to bargain collectively, and the issue of secondary picketing. Our present submission will not address these issues, as we will reserve our comments for the Minister's review of the Code.

We do believe there are other parts of the Code that should be revised. These specific areas can be best considered under the general topic of the Right to Freedom of Association. At present employers are able to ignore or circumvent provisions of the Code, seriously interfering with the ability of workers to choose to join a union and bargain collectively. The Federation believes that changes are required to make some current provisions of the Code effective. Other changes would simply extend the logic of elements already contained in the Code.

We are also aware that the Minister is interested in stakeholder response to the issues of "salting" and "MERFs." Our submission will address these matters only briefly, since we do not believe they represent serious issues in the conduct of labour relations in Alberta today.

The Alberta Federation of Labour thanks the MLA Review Committee for its attention. We look forward to further discussions of these issues. Should the Committee require any clarification or elaboration of the proposals or discussions contained in this submission, you should feel free to contact:

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We wish the Committee well in its deliberations.

Presented on behalf of the Executive Council of the  
ALBERTA FEDERATION OF LABOUR

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### **Part I The Right to Bargain Collectively**

#### **Introduction**

In our work as trade unionists, we daily confront the fact that there are many Albertans who are not represented by a union in their workplace, but who would like to be. Our experience is confirmed by public opinion survey data indicating that over 30% of nonunion workers would like to have union representation.

This is hardly surprising since, all other things being equal, union jobs generally have higher pay and superior benefits to their nonunion counterparts. More importantly, perhaps, union representation and rights enshrined in a collective agreement are the best guarantees of a respectful and dignified workplace atmosphere. The workplace is not, in the normal course of events, a place where democracy flourishes. Many of the democratic rights that we, as citizens, have come to expect are not available in the employment relationship, where common law provides only a bare minimum of rights for employees.

If the demand for union representation is present, why does Alberta rank last among provinces in unionization, with just 25% of the work force covered by collective agreements?

The right of workers to unionize and bargain collectively is enshrined in the *Universal Declaration of Human Rights* (Article 23 (4)) and the *Canadian Charter of Rights and Freedoms* (Article 2 (d)). In our province, the legislation that regulates and governs the relationship between employers and those workers who choose to exercise this right is the *Alberta Labour Relations Code* (the Code).

Many employers cheerfully recognize their employees' right to bargain collectively. These employers work with the union chosen by the workers and cooperate to make the workplace a healthy and productive environment. Other employers, while unenthusiastic about the idea of dealing with a union, reconcile themselves to the prospect. In most of these cases, too, a relationship of mutual respect and cooperation between the union and the employer soon evolves.

There remains, however, a sizeable minority of employers who refuse to respect their workers' desire to be represented by a union. These companies make strenuous efforts to oppose union organizing campaigns, and frequently violate both the spirit and the letter of the Code.

Such activity is, in theory, forbidden by the Code, which says in Section 148 (1) that:

*No employer or employers' organization and no person acting on behalf of an employer or employers' organization shall*

*a. participate in or interfere with*

*i. the formation or administration of a trade union, or*

*ii. the representation of employees by a trade union*

This prohibition constitutes recognition that, if the employees' right to bargain collectively is to be exercised in a meaningful fashion, the decision must be made without employer interference. The British Columbia Industrial Relations Council (that province's counterpart to the Alberta Labour Relations Board) summarized the logic of such prohibitions as follows:

*An employer's conduct has a significant impact on an employee's freedom to make up his or her own mind about collective bargaining. This is true whether what is involved is the initial organizing drive by the union, (or) the union's subsequent application for certification. All of these union and bargaining unit activities must be free from any interference - however subtle and indirect - by the employer because, in essence, the desire of the employees to become union members or, alternatively, to cease to be union members, is the sole and exclusive prerogative of the employees. To put it in less genteel terms, the employer should stay out of it because it is none of the employer's business.*

In Alberta, as matters now stand, any organizing campaign has two parts. In the first stage, the union tries to obtain proof of support from enough employees (40% of the bargaining unit) to apply to the Alberta Labour Relations Board (ALRB) for a Board-supervised certification vote. The second stage is the campaign period leading up to that vote. If a majority of employees in the bargaining unit vote in favour of certification, the ALRB issues the certificate, and the union becomes the bargaining agent.

The Code allows an employer to express opposition to the union (Section 148 (2)), so long as this expression does not involve "coercion, intimidation, threats, promises, or undue influence." These limitations are crucial since, as the Ontario Labour Relations Board (OLRB) has noted:

*"The combination of the economic vulnerability of employees and their assumption that an employer does not welcome a union means that a union organizing drive is a relatively fragile enterprise in which momentum is often critical."*

Unfortunately the prohibition on interference in union organizing drives is often ineffective in the face of determined employer efforts to undermine such drives. For one thing, it can be extremely difficult to prove that intimidation and threats have been used by the employer. Such communications typically take place in informal face-to-face discussions that are difficult to confirm. Threats don't even have to be overt: a discreet employer or manager can convey a message indirectly, but in a manner that clearly warns of reprisals for union supporters.

All too frequently, these oblique threats are reinforced by the dismissal of one or more union activists. Of course, terminating an employee for supporting a union organizing drive is forbidden by Section 149 (a) of the Code, but an employer can almost always provide a "fig leaf" of just cause for such action. As the Canadian Labour Relations Board (CLRB) noted in 1991:

*&It is a rare experience for labour relations boards to hear an employer who cannot advance a justification for his act - e.g. failure to report for work one day, an act of insubordination to a superior, or merely a re-evaluation of the employee's performance which showed he did not maintain the standard desired. They may be proper motivations for employer actions, but experience shows they are often relied upon around the time the employee is seeking to exercise or has exercised his right (to join a union).*

The threat of dismissal is a powerful deterrent to employees who may wish to seek union representation, and employers can easily use such threats to create a climate of fear in the workplace. In such a climate, the protection offered by Section 149 of the Code seems flimsy compared to the very real consequences of taking a stand in opposition to the employer's clearly expressed wishes. In a 1990 ruling, the Ontario Labour Relations Board described these consequences:

*In the Board's experience, employees are often concerned that they may be subject to such reprisals by their employer for union activity. The Board's jurisprudence is replete with examples of employees who were discharged or penalized in some way, at least in part, because of their support for unionization. For an employee who fears that joining a union will lead to a discharge or other penalty, the result he or she contemplates can be a loss of economic security, the loss of the social milieu of the workplace, a concomitant loss of self-esteem, identity or social standing, the uncertainty of finding another job and the possibility of a slide onto social benefits. Of course, in most cases such a bleak picture will not come to pass; nevertheless, the mere possibility of any of these consequences may exert a powerful influence on an employee contemplating collective bargaining, a regime frequently not welcomed by employers.*

The effect of a termination during the course of an organizing campaign goes far beyond the individual who is dismissed from employment. The termination casts a pall over the entire campaign, and over the choice to support the union. If part of the reason to opt for union representation is to provide enforceable rights in the workplace, a perceived inability of the union to defend its own activists calls into question the worth of unionization. In 1980, the Ontario Labour Relations Board recognized this larger impact of such dismissals:

*However, the impact of unfair labour practices are seldom confined to an economic impact. For example, the isolated dismissal of an employee in the midst of or at the outset of an organizing campaign is likely to have a significant "chilling effect" on other employees who witness the incident and understand its origin. The dismissal of a fellow employee for union activity conveys a strong warning to other employees and can bring a stop to an ongoing drive in its tracks.*

Despite this powerful chilling effect, many workers remain steadfast in their commitment to unionization, and many organizing drives are successful. That, however, is not the point. It takes genuine courage to stand up to the threat of job loss and its consequences, and in Canada today exercising a basic democratic right - the right to freedom of association - should not require an act of courage.

## **Proposals**

If the current provisions of the Alberta Labour Relations Code provide "loopholes" that allow some employers to undermine the Charter rights of employees, closing those loopholes should be the first priority in any review of the Code. The Alberta Federation of Labour proposes the following measures as an attempt to safeguard workers' right to the freedom of association.

### **Proposal #1 Automatic Certification on Proof of Majority Support**

As outlined above, a union organizing drive currently has two stages. The first involves "signing up" members who indicate a desire for union representation. When 40% or more of the employees in the bargaining unit have shown their support in writing, the union applies to the Alberta Labour Relations Board for a certification vote. It is during the period between the filing of the application and the vote that employer misconduct most often occurs. This is when overt or implied threats are uttered, and union activists are harassed or disciplined.

The Code now provides no effective protection from such harassment. Even if improper conduct by the employer can be proven (a difficult task given the employer's control over the worksite), in many cases the Code provides no effective sanctions. If, for example, the Board finds that an employer threatened or verbally coerced employees, the Board will issue a ruling ordering the employer to stop making threats, and order a copy of the decision posted on the worksite. This does nothing to remove the effect of the original threats. The absence of effective sanctions in the legislation essentially encourages some employers to engage in practices ostensibly forbidden by the Code.

The simplest way to prevent such misconduct is to eliminate the second step in the certification process - the "election period." This can be done by making certification automatic in cases where the union can demonstrate to the Board that it has the support of over 50% of the workers in the bargaining unit. Employers would have the right to make the usual technical challenges to the appropriateness of the bargaining unit and the accuracy of the union's numbers, but if the Board ruled that the union had sufficient support, it would award the certificate without calling for a vote.

No doubt some employers will object that such a procedure would deprive them of the opportunity to exercise their right to "free speech" during the election period. In point of fact, however, employers (unlike their employees) have the untrammelled right to voice their opinions on unionization at any time. They can discuss issues of unionization with their employees, they can post notices or policies or opinion pieces on bulletin boards in the workplace, and they can call all-employee meetings (with compulsory attendance) to discuss the issues. Removing the campaign period does not materially impinge on employers' right to free speech.

It would, however, provide protection for employees' right to freedom of association by removing an opportunity for employer misconduct. The "trade-off" is not between an employer right to free speech and employees' right to freedom of association. The choice is between, on the one hand, offering a minority of employers an opportunity to contravene the provisions of the Code with impunity, and, on the other, protecting the Charter rights of workers.

Provisions for automatic certification in cases of demonstrated union support already exist in a number of other jurisdictions. Alberta should follow the example of these jurisdictions by adopting similar language in the Alberta Labour Relations Code.

### **Proposal #2 Empower the LRB to Issue Certifications in Cases of Employer Misconduct**

If the Government of Alberta is not prepared to eliminate the requirement for a Board-supervised vote prior to certification, it should take other steps to provide effective remedies when employers breach the provisions of the Code. Probably the simplest way to do this is to give the Board the ability to award an automatic certification if it finds an employer guilty of an unfair labour practice during an organizing drive. Five Canadian jurisdictions currently include such Board powers in their labour legislation. One other jurisdiction that provides for automatic certification when the union has demonstrated more than 50% support among employees, also provides that the Board may order a certification vote if the union fails to demonstrate majority support but the employer has wrongly interfered in the sign-up process. In yet another the Board may order a new vote if it believes that the results of the first vote did not accurately reflect employee wishes because the employer interfered.

All these elements of labour law in other jurisdictions reflect an awareness that some employers can and do interfere with their employees' right to opt for collective bargaining and union representation. In its present form, Alberta's Code fails to protect the Charter rights of workers.

Implicit or explicit threats to workers about the consequences of unionization are only one form of coercion. The discipline or dismissal of union activists during an organizing campaign is a common tactic for anti-union employers. It spreads fear among employees and presents a persuasive argument that the union is incapable of protecting members from employer retaliation. Since there is no collective agreement in place, the only rights the employee enjoys are those contained in the common law of employment.

The union involved can, of course, file an unfair labour practice complaint with the ALRB. Here, again, unions confront a problem of inadequate sanctions attached to employer violations of the Alberta Labour Relations Code. If the Board finds that the employer has violated Section 149 (a) of the Code, it can order the employee to be reinstated. There are, however, two problems associated with this redress.

First, the Board is frequently unable to hear the complaint until after the certification vote has taken place. In these instances, any remedy provided by the Board's ruling comes too late to mitigate the chilling effect of the employer's actions. Since the real purpose of the original dismissal or discipline was to create a chill, the employer will have accomplished his or her goal by deliberately flouting the Code. Of course, the individual worker who is reinstated will benefit, unless the employer has achieved their goal and the certification vote has failed. In that case, the reinstated worker is a "marked man" (or woman), and can expect to face further retaliation from the employer once the union and the Board have turned their attention elsewhere.

Second, even when the Board is able to hear a complaint before the certification vote, and even when it upholds the complaint and reinstates the worker, the chilling effect of the employer's actions may remain. The employer will have sent the message that he or she is prepared to violate the law in order to punish union activists. In the Valdi decision cited above, the Ontario Relations Board recognized this reality:

The mere reinstatement of the employee directly affected, with back-pay some time later, may do little to assure his or her fellow employees that the employer is prepared to live within the requirements of the statute and that effective remedies exist of those occasions where he will not.

In 1993, the OLRB went further, and laid out the consequences of such practices as they affect, not just the individual worker, nor the union as an organization, but the right of the workers to choose freely:

*Moreover, the Board has found on quite a number of occasions that the discharge of a union organizer during a union campaign may lead to a situation where the true wishes of employees can no longer be ascertained, despite the Board's ability to reinstate the organizer. In other words, the intimidatory effect is so powerful that employees can no longer express their real views on unionization&*

In situations where the Board finds that employer misconduct during an organizing drive has clearly violated the Code, the Board should have the authority to award certification to the union without holding a vote in a "chilled" environment.

### **Proposal #3 First Agreement Arbitration**

Once a certificate has been issued, the collective bargaining rights of the employees and the union have been legally established. The parties are required by the Code to meet and to bargain in good faith, in order to reach a new collective agreement. For some employers, unfortunately, this simply marks the beginning of a new phase in the fight to deny their employees union representation.

By stalling negotiations, and by continuing to put pressure on the workforce in general and union activists in particular, the employer can lay the groundwork for a revocation vote ten months after the certificate is issued. Such employers are gambling that, after the experience of a chilled workplace lasting over a year (the period of the organizing drive plus the ten months of negotiations) and after seeing no prospective gains from the bargaining process, workers will vote to revoke the union's certification just to get back to a "normal" working environment.

The deliberate sabotage of negotiations is forbidden by Section 60 (1) of the Alberta Labour Relations Code. It is, nonetheless, easy to accomplish. By agreeing to meet only infrequently and after significant delays, and by advancing bargaining proposals that the employer knows in advance will be unacceptable to any union, the employer can easily stall for the ten month period required. After such an experience, it would hardly be surprising if some employees decided that the union was unable to either protect their rights in the workplace or negotiate improved terms and conditions of employment.

This, again, represents an attempt by employers to flout the provisions of the Code, and the union can file a complaint with the Board charging the employer with failing to bargain in good faith. It can, however, be difficult for a union to prove to the Board's satisfaction that the employer is bargaining in bad faith rather than simply engaging in hard bargaining.

Even when the Board does decide that a "failure to bargain in good faith" complaint is justified, the sanction applied to the employer is usually minimal. Normally the Board will instruct the employer to return to the table and bargain in good faith, and require the employer to post a copy of the decision on the worksite.

If bargaining a new agreement was the only point at issue such remedies might suffice. The employer could delay, but not avoid, reaching a new collective agreement. If the employer's real intent is to prepare for a revocation application, however, the sanction imposed by the Board is almost beside the point. Even if the Board takes the unusual step of extending the ten month bar on revocation applications, the net result is simply to give the employer more time to "work on" the employees. In the end, the lesson drawn by some employees will be that neither the union, nor the Labour Relations Code, nor the Alberta Labour Relations Board can protect their interests, and that they were better off before they voted to join a union.

The only effective way to prevent some employers from using these kinds of tactics to undermine certificates issued by the Board is to give the Board the means to impose a first collective agreement. Eight other jurisdictions in Canada currently have such provisions.

In general, unions view compulsory interest arbitration as a dubious substitute for the right to strike. In the case of negotiations for a first collective agreement, however, the opportunity for one party (usually the employer) to derail bargaining as a way of undermining the certificate outweighs the limitations of interest arbitration as a process.

The Code should be amended to allow the Board, upon request and after the right to strike or lock out has been acquired, to appoint a panel to arbitrate the first collective agreement.

#### **Proposal #4 Incorporating Mandatory Dues Check-off as a Minimum Standard**

When an employer wants to sabotage bargaining for a first collective agreement, an issue they will frequently target is the contract language on union security and dues check-off. A fight over this language is almost guaranteed to drag out negotiations, because a union cannot compromise on this item - to do so would undermine the basis for the union's own continued existence.

When a union achieves certification for a bargaining unit, it becomes the sole and exclusive bargaining agent for all the workers in that unit. In return, it is expected to represent all the workers in that bargaining unit, regardless of whether or not they are union supporters. There are, of course, costs associated with providing representation. Unions believe that those costs should be covered by union dues paid by all members of the bargaining unit - an arrangement called the "union shop." Employers who oppose the union shop do not want to agree to automatic union membership in their workplace.

During the wave of unionization that followed the Second World War, the issue of union security and dues check-off was at the centre of a number of large and disruptive strikes. One of these, at the Ford Motor plant in Windsor, ended when the parties to the dispute agreed to an arbitrated solution. The arbitrator, Mr. Justice Rand, produced a compromise that has formed the basis for labour legislation in most Canadian jurisdictions to this day.

Mr. Justice Rand's award did not create a union shop. Members of the bargaining unit were not required to join the union if they did not wish to. On the other hand, they did have to pay union dues. The award noted that all members of the bargaining unit gained the benefits of union membership, and that to create a class of members who enjoyed those benefits without paying their share of the costs of representation would be unfair.

In Canada right now, this "Rand Formula" is the minimum standard for union recognition clauses in most jurisdictions. Alberta should join most of the rest of Canada in adopting it. Doing so would send a very simple message to employers - that once the Labour Relations Board has issued a certificate, the employees are represented by a union and the employer cannot use bad faith bargaining to try to provoke a revocation of bargaining rights.

#### **Proposal #5 Extend the Right to Strike to All Workers**

At present there are two large groups of workers in Alberta that are denied the right to strike. The first of these are those who provide "essential services" - firefighters, hospital workers, etc.

These workers are covered by Section 96 (1) of the Alberta Labour Relations Code. The second group, most, but not all of them employees of the Crown in Right of Alberta, are covered by the Public Service Employee Relations Act (PSERA).

It is worth noting that, while the rationale for depriving hospital workers and firefighters of their right to strike is the "essential" nature of their work, no similar explanation is offered for government workers. There is, in fact, no real reason for the blanket ban on government sector strikes, except that they might cause the government some embarrassment. The Government of Alberta has deprived its employees of the right to strike because it is the government, and it can pass labour laws tailor-made to its own convenience.

In both the above cases, the workers are offered compulsory interest arbitration in place of the right to strike. The rights of government workers are further constrained by Section 48 of the PSERA, which forbids arbitrators from rendering an award on such fundamental issues as job classifications, seniority rights, and pensions.

In the view of most unions, compulsory interest arbitration is a poor substitute for the right to strike. Public sector interest arbitration is a legislatively imposed substitute for normal collective bargaining. As such, it is intended to produce a settlement similar to what the parties would have reached had they bargained to a conclusion, even or especially if that conclusion was reached through a strike or lockout. In one of the first cases taken to arbitration under the Hospital Labour Disputes Act, 1965 (Ont.), the Chairperson of the Board, H. W. Arthurs, suggested guidelines for use by future boards. He tried, in particular, to clarify the basic task of the arbitration process:

*The parties are invited to conduct themselves as if their relationship were governed by the Labour Relations Act. Only when the time to strike arrives is the procedure under that Act suspended: instead of permitting the parties to discover labour market realities via withdrawal of labour, they are instructed to submit to arbitration. But arbitration is made to substitute for the strike and should therefore likewise be considered an exercise in discovering labour market realities.*

In Alberta, the experience of unions has been that settlements obtained through interest arbitration tend to lag behind those achieved through normal collective bargaining. In other words, interest arbitration in Alberta is not doing its job: it is not functioning as an effective test of labour market realities. This means that if workers in Alberta are deemed essential, they pay an economic price throughout their careers.

Depriving workers of the right to strike also compromises the whole collective bargaining process. Unions and employers in the private sector negotiate with the threat of a strike or lockout hanging over them. It is this threat that makes the parties focus on their respective needs and abandon positions that are marginal. In other words, they have to "get serious" about what they actually require. Compulsory interest arbitration, on the other hand, encourages both parties to hold back during negotiations: if the bottom line is going to be

established in arbitration, there is less incentive for the parties to try to reach it at the table. Since employers generally do better in the current biased arbitration system, they have even more incentive to hold back.

If compulsory interest arbitration doesn't succeed in producing satisfactory settlements, neither does it achieve its goal of establishing a peaceful labour relations climate. Rather it ensures that when strikes do occur, they will be illegal. Illegal strikes are, by and large, more disruptive than legal ones, because there is less preparation for the service interruption caused by an illegal work stoppage. Illegal strikes, and the sanctions imposed on striking unions in their aftermath, also tend to poison the labour relations climate.

The public, and public sector workers, would be better served by a labour law regime that did not single out large groups of workers and eliminate their right to strike.

### **Proposal #6 Ban the Use of Replacement Workers**

The vast majority of labour negotiations in Alberta reach a successful conclusion without either side resorting to industrial action. In the two years 2000 and 2001, 693 collective agreements were negotiated in the province. Of these negotiations, only 10 resulted in a legal strike or lockout.

Alberta is also fortunate that the vast majority of strikes or lockouts are conducted in a respectful, if not amicable fashion. This atmosphere of respect and discipline results not just from the legal limitations on strike and lockout activities contained in the Code. It also stems from a willingness on the part of all concerned to limit the scope of these conflicts. During a serious industrial dispute, both parties have to be aware of the dangers of escalation - of raising the level of conflict to a pitch that will seriously damage the parties and their ongoing relationship.

During a strike or lockout, no employer action is as provocative as the use of "replacement workers." By hiring these workers to continue operations during the dispute, the employer is signaling that they are not prepared to carry on the test of economic strength and market realities to a conclusion. On the contrary, this kind of action signals that the employer is prepared to leave their regular employees on the picket line indefinitely.

The use of strikebreakers causes two forms of apprehension among the regular workforce. First, it raises the possibility that the employer is prepared to try to "bust" the union, and operate in the future with no collective agreement. Second, it poses the threat of permanent job loss if the strike drags on. It is one thing for employees to face the prospect of walking a picket line, losing wages and enduring economic hardship. That is a recognized consequence of a strike or lockout. The use of replacement workers, however, means the regular employees may face unemployment at the end of the dispute.

Both the threat of decertification and the threat of employment loss are likely to provoke very

strong reactions from workers. Nothing could be better calculated to produce further escalation.

The best way to guarantee that industrial disputes in Alberta will continue to be conducted in a civil and orderly fashion is to eliminate the threats of decertification and permanent job loss. Six jurisdictions in Canada currently have legislation that either forbids the use of replacement workers or provides guarantees of job security for striking or locked out workers. Alberta should follow suit.

## **Part II "Salting" and "MERFing"**

### **Salting**

The terms of reference for the MLA Review Committee indicate that the AHRE Minister is soliciting the Committee's views on the issues of "salting" and "MERFing." These terms refer to practices allegedly occurring in the construction industry.

According to the Merit Contractors Association, salting occurs when "a union sends its members to gain employment with a non-union company it hopes to unionize." On the face of it, the Federation is unable to understand the nature of the Association's complaint. Union's use voluntary organizers whenever possible. Having a union member prepared to go out and organize worksites shows a laudable commitment to union ideals. Members who do so are exercising their Charter rights to Freedom of Association and Freedom of Speech. Unions don't see anything wrong with this.

The Association has argued that "These workers&have no interest in working for the company and quit as soon as the union applies for certification." This argument raises several questions.

First: how does the Association know what these individual workers are or are not interested in? It is one thing to point to a pattern of behaviour in a group, but it's quite another to claim to know what is going on in the mind of any given individual. Workers -even militant pro-union workers - may take or quit jobs for a multitude of reasons. Those reasons are - to be blunt - none of the employer's (nor the government's) business.

Second: what would the Association have the government do about workers who allegedly salt? Should employers be allowed to retroactively "unhire" an employee they believe hired on in order to organize the worksite? Should workers in a newly organized worksite be forced to stay on the job for a certain period after certification? Such suggestions are both absurd and sinister, but they seem to follow from the Association's argument. It is difficult to see any governmental response to the alleged problem of salting that wouldn't trample over a number of rights guaranteed all Canadian citizens by the Charter of Rights and Freedoms.

Third: even if the Association is correct about the motivation of these workers, the Federation is at a loss to see their point. We understand why the Merit Contractors Association doesn't like

salting - they don't want their employees to exercise their right to freedom of association. That is understandable, if deplorable. What the Association hasn't done is demonstrate that there is anything wrong with salting, if and when it occurs.

Obtaining employment and persuading your coworkers to join a union is an activity that breaks no law and violates no ethical principle we are aware of. It might cause inconvenience for the members of the Merit Contractors Association, but that hardly constitutes a basis for government intervention - much less government intervention that jeopardizes the Charter rights of Albertans.

### **MERFing**

The Merit Contractors Association also objects to the existence of Market Enhancement Recovery Funds or "MERFs." The Association says these are funds amassed by the unions that are used to subsidize the wages of unionized tradesmen - providing a competitive edge to union contractors.

Once again, the Alberta Federation of Labour is at a loss to understand the nature of the Association's objection. Unions in the construction industry essentially function as suppliers - providing an input (skilled labour) to unionized contractors. It is not unusual in business for a supplier to offer a reduced price for its product (based on purchase volumes or other criteria) to favoured customers. In fact, establishing a relationship with suppliers and obtaining preferential pricing from them is a basic tactic used by businesses in every industry.

As with the issue of salting, when we address the issue of MERFing the Federation is left with the question: What is wrong with it? Once again, the Merit Contractors Association appears to be confusing things that cause them inconvenience with things that are illegal or wrong. Certainly there is no practice here that could properly be addressed by changes to labour legislation. If there is an issue at all, it is probably one of fair competition - one that should be addressed by the bodies charged with enforcing federal competition law.

### **Part III Conclusion**

If there is to be a review of Alberta's labour legislation, the Alberta Federation of Labour strongly believes that it should focus on the right of Albertans to organize themselves in the workplace and join a union. At present, loopholes in provincial labour law allow employers to flout the provisions of the Alberta Labour Relations Code with impunity, and in so doing deny their employees the opportunity to exercise their Charter rights. In particular, the Federation urges the Government to:

1. Amend the Alberta Labour Relations Code to allow the Alberta Labour Relations Board to award automatic certification to a union that demonstrates more than 50% support from the workers in an appropriate bargaining unit.

2. Amend the Code to allow the Alberta Labour Relations Board to award a certificate to a union when employer interference in an organizing drive has been proven.
3. Amend the Code to provide for compulsory interest arbitration when negotiations toward a first collective agreement break down.
4. Amend the Code to incorporate Mandatory Dues Check-off as a minimum standard for collective agreements in the province.
5. Amend the Code and the Public Service Employee Relations Act to extend the right to strike to all workers in Alberta.
6. Amend the Code to ban the hiring of replacement workers during a strike or lockout.

On the other hand, the Federation does not believe that the Government of Alberta can or should take any steps with regard to salting and MERFing. To be blunt: these are non-issues, raised by a group of employers in the hope of leveraging some further advantage in Alberta's already biased labour laws. The Government should take no notice of this attempt.

The Alberta Federation of Labour thanks the Committee for its attention, and wishes the Committee well in its deliberations.

**Respectfully submitted,**

**ALBERTA FEDERATION OF LABOUR**

September 12, 2002