

What's Wrong with Alberta's Labour Law?

AFL Submission to the Provincial Legislative Standing Policy Committee on Learning

The Alberta Federation of Labour is pleased to have the opportunity to make this presentation to the Standing Policy Committee on Learning.

The Alberta Federation of Labour is the senior labour central in the province. Formed in 1912, the AFL now represents 125,000 unionized workers from over forty different public sector, industrial, communications and transportation, service sector and building trades unions.

Our members represent a cross-section of Albertans - men and women who work at a broad variety of occupations and who, with their families, live in virtually every community across the province.

One of the most important roles of the Federation is to provide a voice for organized workers on public policy issues. As such, the AFL makes presentations on a broad range of social, political and economic issues to each of the three levels of government. Further, since its foundation, the Federation has made an effort to represent the interests of unorganized workers on critical workplace issues like employment standards and occupational health and safety since these workers, by definition, have no organized voice of their own.

However, if there is one overriding focus of the Alberta Federation of Labour, it is the protection of the rights of workers and the maintenance of a healthy labour relation's climate in our province.

Unfortunately, several recent labour relations' developments in Alberta have caused great concern among the Executive and Officers of the Federation. First there is the reappearance of the kind of virulently anti-union labour dispute which the province has not seen since the Gainers strike in 1986. Secondly, there is evidence of an organized, stridently anti-union lobbying effort by non-union employers aimed at undermining what little legislative protection Alberta workers currently enjoy.

In this submission, the Federation will deal with these two issues separately. First, the submission will address the labour movement's concerns about the deteriorating labour relations climate in Alberta and point out why this should alarm government as well as labour. Secondly, we will examine the current criticisms of labour legislation, provide a brief summary of how labour views labour legislation, and suggest areas for improvement. Finally, we will provide a very brief outline of the fundamental flaws in the so-called 'right-to-work' agenda that is being promoted by a few self-interested employer organizations.

Part I The Growing Crisis in Labour Relations in Alberta

The vast majority (over 95%) of negotiations between employers and their workers' union result in collective agreements without either side having recourse to strikes or lockouts. Few people are aware of that key fact simply because the mass media do not consider such occurrences to be 'news'.

However, even in those few cases where strikes or lockouts occur, the intention of both sides has been to mount economic pressure upon the other side in negotiations in an effort to reach a mutually acceptable agreement. Sanctions and the threat of sanctions are part of the free collective bargaining process. And, while no one is happy with work stoppages (neither workers nor employers), they are normally effective in inducing compromise and settlement, and they are one of the costs of living in a democratic society. (Prohibition of the right to strike has never worked in Canada because, unlike totalitarian regimes, Canadian governments do not countenance the use of suppressive force against their own citizens.)

Unfortunately, there are occasions where the ultimate employer sanction (the lock-out) is not being used to compel workers to alter their bargaining position, but is instead being used to strip workers of their democratic right to belong to a union. Such employer actions are not simply 'union busting' - although that is their intent. They are, in plain fact, a flaunting of the government's laws - which explicitly state that sanctions must only be used to compel bargaining - never to get rid of unions.

When these rare breaches of the very spirit and underlying principles of labour law and free collective bargaining occur, it is almost universally a signal that something is going seriously wrong in the labour relations system. And, then it is time for government to act clearly and publicly to restore the balance in the system and to send a strong message to other employers that such conduct is unacceptable.

Two Key Disputes

There are two disputes in Alberta that the AFL contends currently fall into this category of grossly unacceptable employer behaviour.

The Calgary Herald Strike

The first is the strike/lockout at the Calgary Herald. During this dispute, the owner of Southam Press, Conrad Black, publicly called the striking reporters, photographers, editorial writers, distribution workers and press operators a "gangrenous limb" which had to be "amputated". He also stated publicly that he intends to settle the dispute by waiting for the two year statutory period to be over (after which the strike is no longer recognized by Alberta law) and then decertifying the union.

The employer has made very clear its intentions to simply negate the democratic choice made by the majority of the employees to be represented by a union. Southam will accomplish this by failing to reach an agreement at the table, claiming that bargaining is at an impasse - which follows the letter of the law.

But, Conrad Black has broken the spirit of the law, which was written to protect and enforce the democratic rights of workers. Everyone in the province and across the country knows that Conrad Black has only one intention, and that is to break the union. He will make no compromise. He will not bargain in good faith. He has said so in no uncertain terms.

Black's vilifying of Calgary Herald strikers has been so blatant that even the Catholic Church in Calgary has spoken out against his actions. Yet the Government of Alberta, whose laws are being scoffed at by Conrad Black, has said nothing. The silence of the Government on most labour issues can be attributed to Government's theoretical role as impartial umpire in labour relations matters.

However, silence in this case is not neutral. It is a clear signal that either the Government supports and endorses Conrad Black's anti-union campaign - or, that the government is afraid of this Ontario billionaire.

The Alberta Federation of Labour strongly urges the Government to speak out on this issue. Let Conrad Black know that if the majority of Alberta workers in any worksite vote to join a union, then the Government expects the effected employer to bargain in good faith in a sincere and meaningful way with the intention of reaching a collective agreement.

Further, the Government should tell Mr. Black, in no uncertain terms, that it will use its authority to appoint a disputes inquiry board to effect a settlement should the two sides not reach one immediately. In this case the employer's actions and statements have so chilled bargaining that there may be no chance of a freely bargained collective agreement, and government may need to go one step further and arbitrate a compulsory settlement. There is an urgent need here for government intervention to preserve the integrity of the labour code itself.

The BDL (Labatts/Molsons) Strike

This dispute also indicates a breakdown in the labour relations system. Here, a company jointly owned by Canada's two brewing giants has locked out their employees. The company is demanding wage and benefit cuts of up to thirty-eight per cent.

Any time an employer comes to a bargaining table demanding that kind of concession, there are very good grounds for believing that they are intentionally creating a conflict. (Imagine the scorn that employers and the media would heap on a union that came to the table today demanding a forty per cent increase in pay and benefits).

The BDL demands are particularly suspicious in today's economic climate. Buoyant economies with high levels of employment, like Alberta's today, should create a labour market where workers are in a position to bargain decent increases in wages and benefits. There is something very wrong with the BDL situation.

Consider that BDL has freely, without strikes or lockouts, entered into a series of collective agreements over the past decade that resulted in the wage and benefit levels in the most recent collective agreement. The company, and its parent companies, were obviously making healthy profits while paying those wages.

Also consider that BDL knows full well that workers make their economic plans and commitments based upon their financial conditions. Unionized workers commit themselves to mortgages and other purchases for themselves and their families based upon their current wages. A variance of three or four percent up or down can be accommodated, particularly in times of low inflation, but a forty per cent cut is impossible. The company was creating demands that it knew the workers could not accept.

When a profitable company forces a confrontation - especially when its demands are accompanied by threats of closure - then the inescapable conclusion is that the company intends to either run non-union in its current incarnation or close down and reopen as a non-union operation.

This is again a case where the public declaration and actions of the employer run counter to the most important underlying principle of labour law - that workers have the right to a union and a collective agreement when the majority vote to have a union.

BDL officially closed its doors on May 18, 2000, thereby throwing 104 long-time employees on the street.

If this company, under any guise, ever tries to reopen in Alberta, those 104 workers and their union should be reinstated. Any other course of events sends a message to every unionized employer in Alberta that their workers have no right to have a union. That is exactly why labour codes have successor rights provisions - so that employers cannot flout their obligations under the Code.

Yet when BDL publicly stated that if they shut down, they intended to reopen as a non-union entity, the Government of Alberta was again silent. The AFL believes that the Minister of Human Resources and Employment, who is responsible for upholding labour law in Alberta, has an obligation to speak out on cases like this.

Like the Calgary Herald strike, the BDL lockout indicates an attempt to undermine the right of workers to union representation. If unionized employers can simply close shop, like a thief in the night, and then re-appear non-union across town, then no workplace can remain unionized - even if one hundred per cent of the workers join and support the union. This is an untenable situation for labour.

Once again, we urge the Government to take action. At a minimum, the Minister responsible should make the Government's position on successor rights public. The Minister should urge BDL to reconsider its actions and to give up any notions of reopening as a non-union business.

On a more positive note, the Minister should consider calling a disputes inquiry board to examine the situation and help effect a just settlement.

Part II What's Wrong with Alberta Labour Law

There are a small number of employers and employer organizations in Alberta that persistently complain about Alberta labour laws. These organizations are usually made up of non-union employers, or represent a small number of unionized employers (mostly in the construction field) that wish to become non-union.

The AFL submits that such organizations do not understand the fundamental purpose of labour laws nor have they any legitimate right to criticize such laws.

It is critical to any public debate or investigation into labour laws that the basic purpose of these laws be clearly understood - and that those underlying principles inform all discussions about labour law.

Labour laws, since the negotiation of 'labour peace' at the end of the Second World War have all had at their core the principle that workers have the democratic right to join a union. In every Canadian jurisdiction, unions may only exist where the majority of workers in a work place freely choose to join a union. But, once that democratic decision has taken place, the state has agreed to protect that right.

So the first principle of labour law in Alberta, and throughout the rest of Canada, is the protection of the rights of workers to join unions.

There are critical things that flow from this first principle. Workers may not be fired or punished by employers for joining or desiring to join a union. Employers may not coerce or intimidate workers into not joining a union.

And, once a union is in place, employers must recognize the union and must engage in good faith bargaining in an effort to reach a collective agreement.

Most of the rest of the labour code serves to regulate and enforce the basic relationship between unions and employers. How is certification or decertification to be regulated? How are negotiations to be conducted? How are collective agreements to be reached? How are they to be enforced? How will strikes and lockouts be regulated? What are the penalties for violations of the code?

There are many reasons why governments originally endorsed and continue to support this form of labour laws.

First, it guarantees labour peace. As stated at the beginning of this submission, the vast majority of negotiations result in freely bargained collective agreements. In the few disputes normally arising, most are settled within a very short period of time.

Prior to modern labour laws, the typical work place in Canada was an ongoing battle zone. Any examination of strikes and lockouts in the 1930's and earlier reveal a shocking degree of ongoing violence, coercion, intimidation and conflict. Without union legitimacy, workers wages and benefits and the social benefits available to them and their families were extremely poor. This resulted in huge manifestations of social unrest and political instability. Unless Alberta wants to return to that style of labour relations, the current system must be strengthened and supported.

History also shows us that regardless of labour laws, unions will always exist. The choice is whether or not to have regulated workable labour relations or labour relations chaos. Not surprisingly, Canadian governments chose the former - which has produced our labour laws today. Workers gave up the right to mid-term or wildcat strikes. Unions agreed to become partners in preserving workplace peace. And, in return, employers had to give up the right to ignore the democratic wishes of their workers.

Labour Concerns About the Law

The labour movement in Alberta has many concerns about the Alberta Labour Code - and in fact with virtually every other piece of legislation governing the work place. While recognizing that labour would probably find flaws in any labour code, there are sound reasons for the Alberta Federation of Labour's assertion that Alberta has the worst labour code in Canada.

First, the proof of the pudding is in the eating. Alberta has the lowest unionization rate in Canada. At just under twenty-three per cent unionization rate, Alberta is behind even unindustrialized Prince Edward Island (27%) in union presence.

Unless one buys into the mythology that Albertans are somehow 'different' from all other Canadians, it is fairly clear that Alberta labour laws discourage unions.

The AFL contends that the Labour Relations Code does this in two ways. It encourages or allows greater employer interference with workers rights and it provides inferior protection of those rights in the first place.

In the basic certification process, Alberta, unlike most jurisdictions, does not allow automatic certification upon proof of majority worker support for a union. Instead, the law requires a mandatory vote - which gives employers up to ten weeks to "electioneer" against the union in the work place. When you consider the immense 'clout' an employer has on the day to day lives of workers, it is not surprising that this form of electioneering has been blamed for the loss of up to twenty-five per cent of legitimate certification votes.

Once a union is certified, the greatest hurdle is always negotiating a first contract. Many employers are unwilling to concede that they are now compelled to respect the wishes of their employees and bargain wages, benefits and working conditions with a union.

In most jurisdictions, the law recognizes the problem by having a mechanism for enforcing an agreement at the first contract step. This helps establish a relationship between the parties and provide a kind of trial marriage during which the employer and union can learn to trust one another. Only Alberta, Nova Scotia and New Brunswick do not have some form of this kind of provision.

Union security is another major stumbling block in contract negotiations in Alberta. Simply put, unions insist upon collecting dues from every worker who falls under the protection of the collective agreement. This is a basic democratic principle. Once the majority vote to have a union, then all must help pay for it because all benefit from its presence.

It is completely analogous to taxes. Once a majority of citizens elect a government, then all must pay whatever taxes that government levies. If citizens could enjoy public goods without paying for them, then most would choose to become free riders. This would soon make providing those public goods impossible financially.

Just so with unions - which have a statutory obligation to provide all benefits and services to every worker who falls under the collective agreement. Unions do not insist upon mandatory membership - but they do insist that those who enjoy the benefits must also pay their share of the costs of those benefits.

It is such a fundamental requirement for labour that most provinces legislate the so-called Rand Formula into their codes to help preserve labour peace by removing the issue from bargaining. Only Alberta and three of the Maritime Provinces do not include this kind of clause in their codes.

Another contentious issue for labour is the use of strikebreakers or 'scabs' during labour disputes. Several provinces have experimented with anti-scab legislation. Ontario has had it in the past, Manitoba is planning such legislation for the future, and Quebec and B.C. currently have this legislation.

Once all of the mythology is removed, prohibitions on the use of strikebreakers makes perfect industrial relations sense. Violence on the picket line does not occur until people start crossing to do work that strikers normally do. That is straightforward. The strikebreaker is actually taking away the job of someone who is simply exercising a democratic right.

Secondly, the purpose of a strike or lockout is to apply economic pressure on both sides to reach a negotiated settlement. If the economic pressure is only felt by one side, then the system breaks down. If the employer continues production as usual with strikebreakers, there is no pressure upon them to bargain.

The use of strikebreakers increases the length and violence of strikes by escalating conflicts over wages and benefits to conflicts over employment and union security.

Finally, the use of labour brokers, spin-off companies and various other forms of union avoidance should be prohibited in the code. A basic principle of any code must be the protection of the original democratic workplace decision to join a union. Any code that allows employers to sneak away from their legal obligation to bargain collectively in any way is simply not doing its job.

These are just a few of labour's concerns about the Alberta Labour Relations Code. There are many, many other ways the Code could be improved. The Alberta Federation of Labour would like to see a comprehensive overhaul of the Code to improve its protection of workers and workers' rights. That is after all, the reason the Code exists in the first place.

The AFL is extremely concerned about how any planned review of the Alberta labour laws would occur. Since the function of the Code is to enshrine, enforce, and protect workers' and unions' rights, it stands to reason that it is workers and unions that should be consulted during any review. And, it is workers' and unions' concerns that should be the primary focus of any amendments to the Code.

Further, although the Code concerns all workers because it is their doorway to union rights, there are sections of the Code that concern only unions and unionized employers. For example, the Alberta Labour Relations Board is a tripartite body made up of unions, unionized employers, and the government. Submissions concerning the make-up and function of the Board should be restricted to those parties directly involved in the Board.

Part III False Freedom: the 'right-to-work' deception

The Federation is concerned that a future labour review may be seen by some as another opportunity to push for so-called "right-to-work" laws instead of around the legitimate focus of labour law which is rights-at-work.

In an effort to prevent a badly needed review of Alberta laws from being derailed by a small interest group of anti-union zealots, the AFL would like to initiate a brief review of the "right-to-work".

A: Defining the Issues

"Right-to-work" is a slogan designed to mislead. The phrase suggests that "right-to-work" laws somehow guarantee employment for all workers. But, in reality, these laws have nothing to do with guaranteed employment. And they are not really about "rights" or "freedoms". Instead, "right-to-work" laws are designed primarily to impose restrictions on collective bargaining. More specifically, these laws establish legal prohibitions on the freedom of unions and employers to include union security clauses in collective agreements.

The term "union security" refers to provisions written into collective agreements that require all employees to either (a) pay union dues, (b) pay dues and join the union after hiring, or (c) be a member of the union before being hired.

So if we really want to be accurate, we should refer to "right-to-work" laws as "limitation of freedom to contract" laws.

A rational way to predict the consequences for Alberta of these laws is to examine the economic, social and labour relations in those jurisdictions where these laws are already in place.

The most notable example of such jurisdictions is the United States.

B: The American Experience

The United States has been experimenting with "right-to-work" laws since the Taft-Hartley Act was passed in 1947. Consequently, there are forty-eight years of economic and social data and a wealth of studies on the key economic issues surrounding the debate on "right-to-work".

Hard economic and social evidence is available that compares right-to-work and free collective bargaining states. None of it is favourable to proponents of "right-to-work". A cursory examination of the evidence follows:

1. Economic Indicators

Eighteen of the twenty-one "right-to-work" states have had these laws in place for over thirty-seven years (twelve of them for over forty-eight years). Any economic "benefits" should have been long evident, but clearly are not.

a) Wages

All 21 of the "right-to-work" states are below the national average annual pay. Payroll workers in free collective bargaining states earn an average \$4,343 (U.S.), or 18%, more than payroll workers in "right-to-work" states.

Per capita personal income is \$2,956 (U.S.), or 16%, higher in free collective bargaining states. Average hourly earnings in manufacturing are \$1.62 (U.S.), or 15%, higher in free collective bargaining states. The nine highest ranked states in this category are "free" states, as are 22 of the top 25.

b) Poverty Rates

Poverty rates in "right-to-work" states are higher than in "free collective bargaining" states. Poverty rates in "right-to-work" states averaged 16.3% in 1992-93. The average in the rest of the states was 14.2%. The national average was 15.0%.

c) State Government Finances

Predictably, given their negative overall wage levels, "right-to-work" states also fare badly in

comparisons of state government revenues. Nine of the top-ranked ten states in per capita state government revenue, and twenty of the top twenty-five, are free collective bargaining states.

d) Economic Instability

In the United States, 90% of all bankruptcies are personal rather than business. Bankruptcy rates are one measure of overall economic stability. "Right-to-work" states average 371 bankruptcies per 100,000 population, while free collective bargaining states average only.

A recent study of state business cycles found that "right-to-work" states were more unstable economically and more likely to fluctuate widely during upturns or downturns in the national economy.

e) Business Investment

There are many, many different measures of business location desirability. The least meaningful are those which simply poll business executives about their opinions. Talk is cheap. A realistic assessment must involve some kind of economic yardstick.

New business incorporations are one such yardstick because they track investment rather than intention. In 1988, "right-to-work" states averaged 11,310 new business incorporations. Free collective bargaining states averaged thirty-five per cent more with 15,360 new business incorporations.

In 1992, 85% of all new business incorporations in the United States took place in the top twenty-five states. Of those 567,669 new businesses, 355,948 located in free collective states and 211,721 located in "right-to-work" states. Seven of the top ten ranked states for new business incorporation, and sixteen of the top twenty-five were free collective bargaining states.

2. Social Indicators

Although "right-to-work" laws have clearly not been an engine for economic prosperity, an examination of social indicators within these states produces frightening evidence of social inequality, grossly inferior social and public services that fall well below the norm for economically advanced states.

a) Health Indicators

i. 17.8 % of the population in "right-to-work" states have no medical insurance coverage. Free collective bargaining states have a significantly better record, with only 13.7% of the population uncovered.

ii. Overall composite health rankings compiled by Northwestern National Life Insurance Company show free bargaining states with 12 of the top 15 ratings for population health, while 10 of the bottom 15 are "right-to-work" states. 71% of "right-to-work" states scored below the national average composite health score.

A study of childrens' health by the same company in 1993 showed 79% of free states above the national average and 62% of "right-to-work" states below the national average.

b) Education Indicators

- i. According to information gathered by the American Federation of Teachers, free collective bargaining states spend an average of \$1,300 per pupil per year more on public education than "right-to-work" states. Only one "right-to-work" state, Wyoming, spends at or above the national average per pupil.
- ii. The average school dropout rate was sixteen per cent higher in "right-to-work" states. Eleven of the worst fifteen states for school dropouts were "right-to-work".

c) Unemployment Protection

- i. Only 26% of unemployed workers in "right-to-work" states received unemployment benefits, compared to 31% in all other states.
- ii. Of those who did receive benefits, those in "right-to-work" states received, on average, 20% less (\$31) per week than those in free collective bargaining states.

d) Crime Rates

The top three crime rates in the United States (and four of the top five) are in "right-to-work" states.

3. Labour Relations Indicators

a) Union Membership

Union membership in "right-to-work" states accounts for only 8.52% of all wage and salary workers. In free collective bargaining states, unions represent 19.74 % of all wage and salary workers.

The Free Rider Effect

'Free riders' are workers who take advantage of "right-to-work" laws to enjoy union benefits and wages and protections at a unionized job site while refusing to pay union dues. The union maintains the obligation to defend these workers through expensive negotiation, grievance and arbitration processes (the duty of fair representation), but is unable to collect any dues for those services. The consequent draining of union finances reduces union effectiveness and viability and ultimately results in overall worker dissatisfaction with unions. This leads to decertifications and failed organizing and certification drives.

b) Workplace Safety

The prevailing health and safety standards and availability of adequate compensation for workplace injuries are also key factors in establishing a good industrial relations climate. In both these categories, "right-to-work" states fail in comparison to free collective bargaining states.

The average maximum weekly compensation benefits for injured workers is \$387 in "right-to-work" states, as opposed to \$486 in the other states.

In 1992, job fatalities averaged 9.0 deaths per 1,000 workers in "right-to-work" states, thirty-three percent higher than the fatality rate in other states.

The Impact of Forty-Seven Years of "Right-to-Work" in the United States

"Right-to-work" laws in the United States consistently reduced union density through increased incidence of free riders and a measurable chilling effect upon union organizing.

The substantially lower union density in "right-to-work" states has depressed wage and benefit levels. These lower wages have several negative economic and social consequences. Tax revenues in these states are lower than other states, leading to inferior public and social services and increased poverty and crime. The lack of consumer spending capacity makes these states more liable to the periodic economic upturns and downturns typical of a market economy.

Finally, low wages and low unionization rates are the signs of a more primitive and unproductive labour relations climate where worker dissatisfactions go unaddressed and wage gains bear no relationship to productivity. These laws promote sectionalism and social inequality and unrest.

Conclusion

The Alberta Federation of Labour is extremely concerned about the labour relations climate in our province today. The pendulum has swung too far in the employers' favour and a Gainer's style confrontation is inevitable unless something is done to redress the situation soon.

There is a need for prompt effective action by the Government to resolve both the BDL lockout and the Calgary Herald strike/lockout. Failure to do so will be tantamount to declaring 'open season' on unions and workers' rights in Alberta.

Such an escalation of union/employer conflict will create the kind of tinderbox of union and worker discontent that existed in the mid-eighties and which led directly to the Gainer's strike of 1986.

Current employer complaints about the Alberta Labour Relations Code are illegitimate. Most unionized employers and most large unionized employers are quite happy with the Code. The same is true of non-unionized firms - if they are non-union, what possible basis do they have to intrude upon the Code at all?

There are significant problems with the Labour Relations Code from a worker's perspective. Certifications are more difficult than in other Canadian jurisdictions, as are contract negotiations and labour disputes.

A full review of the Code is desirable only so long as the fundamental purpose of the Code - the protection of workers' democratic rights to belong to a union and to work in a unionized environment are the benchmark of the review.

The proponents of so-called "right-to-work" laws are actually anti-union employers in a very thin disguise. Any attempt by such groups to hijack discussions about labour law reform must be dismissed. The right to work does not address workers rights at all - and it provably makes workers' lives more arduous.

Respectfully Submitted,

Alberta Federation of Labour