Alberta Bill 32

Unifor Legal Department Analysis of the *Restoring Balance in Alberta's Workplaces Act, 2020*

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Introduction

This document examines Bill 32, titled "*Restoring Balance in Alberta's Workplaces Act, 2020*". As in many cases, the words of the title bear little resemblance to the content of the proposed law. In many ways, the Bill restores an imbalance in favour of employers.

Bill 32 was introduced in the Alberta Legislature on July 7, 2020. This document examines the First Reading version of the Bill. As of July 20, 2020, debate is ongoing at Second Reading and the Bill has not yet been amended. We expect that the Bill will be enacted soon. We assume in this document that the Bill will pass in its current form, but our comments ought to be considered against any amendments when the Bill is enacted. The status of the Bill can be checked here.

Bill 32 changes the *Employment Standards Code*. The changes are about increasing flexibility for employers, and diminishing the rights of employees. Most of these changes will affect mainly non-unionized employees who do not have the protection of a collective agreement.

Bill 32 also changes the *Labour Relations Code*. Some of the changes reverse modest measures enacted by the NDP Government in 2017. Other changes, when viewed through the lens of Canadian labour relations, are radical and unusual.

This document does not look at changes to the construction industry provisions in Part 3 of the *Labour Relations Code*. It also does not survey changes that Bill 32 will make that affect particular groups of employees covered by the *Police Officers Collective Bargaining Act* (Part 3 of Bill 32), the *Post-Secondary Learning Act* (Part 4 of Bill 32), the *Public Education Collective Bargaining Act* (Part 5 of Bill 32) and the *Public Service Employee Relations Act* (Part 6 of Bill 32). In the case of each of those statutes, the amendments include the same financial disclosure and political activities amendments in the *Labour Relations Code*.

Part 1 of Bill 32 – Employment Standards Code Changes

Effective date of changes

Assuming that the Bill is passed as drafted at First Reading, most of the *Employment Standards Code* changes will take effect on November 1, 2020. Changes to the group termination rules, termination pay after layoff, and variances and exemptions will take effect on August 15, 2020. Other changes will come into effect when the Bill is proclaimed.

Payment of wages on termination

When employment comes to an end, employers will now be able to decide between two time limits for the payment of an employee's final earnings. It can wait until 10 days after the end of the pay period or it can wait until 31 days after the last day of employment. This substantially lengthens the current time for paying final earnings which in most cases is ten days after the last day of employment. The new rule will apply whether the employee has been terminated or has quit.

Making employees wait longer to get their final earnings increases the hardship on employees who have lost their employment. Employees may have to wait for 31 days to get their final earnings even when the termination has been planned by the employer and the employer has provided notice of termination.

Section 4 of Bill 32 contains a transitional provision which provides that. the old rules apply to terminations or resignations that occur before the coming into force of the new provisions (even if the amounts have not yet been paid).

Deductions from earnings

Section 12 of the *Employment Standards Code* is amended to permit an employer to deduct from an employee's wages any amount of earnings that was paid to the employee as a result of a "payroll calculation error" if they do so within six months of the error. It also authorizes the recovery of vacation paid to the employee in advance of the employee being entitled to it.

The employer must give written notice to the employee that the deduction will be made, but the consent or authorization of the employee is not required. Existing rules that prohibit deductions for such things as faulty work or cash shortages are not changed.

Section 5 of Bill 32 contains a transitional provision affecting this subject, which provides that the new rules only apply to amounts paid after the coming into force of the amendments.

Hours of work

Bill 32 permits a collective agreement to modify existing rules that require that hours of work in a work day be confined to 12 hours.

Notice of work times

Bill 32 permits a collective agreement to modify existing rules that require employers to post or otherwise notify employees of their shifts, and that require that where shifts are changed, to give employees at least 24 hours of notice and 8 hours of rest between shifts.

Rest periods during work

The *Code* currently requires a rest period "within" each 5 hours of work so that an employee working a 5 hour shift gets one rest period and an employee working a 10 hour shift gets two rest periods. Bill 32 makes the rest period entitlements apply only in the case of shifts that are longer than 5 hours or longer than 10 hours. The rules otherwise are similar. These breaks can be paid or unpaid. They can be broken into two 15 minute breaks if there is agreement. If the timing of a break or breaks is not agreed, the first break must be within or immediately following five hours of work. As before, a collective agreement can have different rest provisions.

Days of rest

Bill 32 permits a collective agreement to modify existing rules about days of rest. Those rules require at least one day of rest per week, or two consecutive days of rest in each 2 weeks, or 3 consecutive days of rest in each 3 weeks or 4 consecutive days of rest in each 4 weeks.

Averaging arrangements

The *Code* currently permits an hours of work averaging agreement to be made by an employer and employees. Hours of work can be averaged over a maximum of 12 weeks for purposes of calculating overtime pay or time off entitlements. An averaging agreement can be in a collective agreement or if there is no collective agreement, it can be in an agreement with one employee or a group of employees. Agreements that are not part of a collective agreement cannot be for more than two years, and must have a start and end date.

Under Bill 32, instead of "averaging agreements" the *Code* will permit an employer unilaterally to implement a written "averaging arrangement" for employees that are not covered by a collective agreement. An employer that implements an averaging arrangement will have to give 2 weeks notice to existing employees, or tell new employees about the arrangement. An averaging arrangement that is not in a collective agreement can last forever – it need not have a start date or end date. An averaging arrangement can average hours of work over a number of weeks up to 52 weeks without a variance or exemption. An averaging arrangement can also describe the way in which the employer will modify work schedules. It continues to be the case that the Director of Employment Standards can cancel an averaging arrangement in accordance with regulations.

Section 82, which deals with enforcement, is amended by Bill 32 to require that complaints that an employer failed to pay wages or overtime pay where an averaging agreement applies must be made within six months after the averaging arrangement ceases to apply to the employee or comes to an end. This appears to restrict the availability of complaints that can otherwise be made until six months after the employee's employment comes to an end. Section 90, which deals with limitation periods for orders, is amended to refer to averaging arrangements so that employees may recover wages or overtime pay for the whole of the period to which an averaging arrangement applies. Section 138, which grants regulation-making powers, is amended to refer to averaging arrangements instead of agreements. There may be regulations about how employers may cancel averaging arrangements and implement different arrangements.

There is in section 6 of Bill 32 a transitional provision affecting this subject. Section 6 of the Bill describes when old averaging agreements will come to an end. It says that either party to an existing agreement may end it on 30 days' notice to other party.

Comments: Permitting overtime pay or time off entitlements to be averaged over a 52 week period is extraordinary. The purpose of overtime averaging ought to be to accommodate periodic fluctuations in work, and allow work to be compressed in a way that benfits employees and employers. Averaging over a very long period however suggests that the policy goal is to minimize additional costs to employers by maximizing opportunities to average the weekly hours of work to avoid overtime pay.

General holidays

The *Employment Standards Code* in section 1(1) currently has a definition of average daily wage that is used to determine the pay for a general holiday. It is defined as 5% of the employee's

wages, general holiday pay and vacation pay earned in the 4 weeks immediately preceding the general holiday.

Bill 32 would repeal that definition and add to Part 5 of the *Code* a new section 24.1 that lets an employer select one of two methods for calculating the average daily wage of an employee for purposes of the general holiday provisions in Division 5 of the *Code*. The total employee wages earned by the employee are averaged over the number of days worked in two possible periods of time selected by the employer. The two choices are the 4 weeks immediately preceding the general holiday, or the 4 weeks ending on the last day of the pay period immediately preceding the general holiday.

The new rule removes from the calculation other general holiday pay that fell within the 4 week reference period, and also "vacation pay earned" in that reference period. This presumably simplifies the calculation for employers but it will lower the amount of general holiday pay for employees. Employees covered by a collective agreement that specifies a more generous calculation will not experience this lower calculation.

There is in section 2 of Bill 32 a transitional provisions affecting general holidays. The old calculation method applies to any general holidays that occurred before the coming into force of the new provision (even if the general holiday pay has not yet been paid by the coming in force date).

Vacations and vacation pay

The only amendment by Bill 32 to the vacation pay provisions of the *Employment Standards Code* is a beneficial clarification to section 34 to make clear that time spent on statutory leaves of absence is included when calculating the employee's years of employment for vacation pay entitlement.

Group termination of employment

Bill 32 will undo amendments to the *Employment Standards Code* that were effective in 2018. Those amendments required longer notice under section 55 to individual employees affected by in cases of group termination. That notice can extend up to 16 weeks in cases where 300 or more employees are to be terminated at a single location in a 4 week period.

Bill 32 amends section 55 to remove the requirement of different individual notice in cases of group termination. Separately, it repeals the 2017 NDP amendments entirely. What is left is a requirement that, where an employer intends to terminate the employment of 50 or more employees at a single location within a 4 week period, it must to give a notice to the Minister at least 4 weeks in advance of the first termination "unless the employer is unable to do so". Requirements to also give notice to a bargaining agent are repealed.

Temporary layoff

Section 62 of the *Employment Standards Code* currently requires notice of either one or two weeks in advance of a temporary layoff, or as soon as reasonably practicable where that notice cannot be given because of unforeseeable circumstances.

Bill 32 will repeal section 62(2) entirely. This removes the advance notice requirements. A written layoff notice would still be required that sets out the start date of the layoff.

Termination pay after temporary layoff

Section 63 of the *Employment Standards Code* currently provides that after any 60 days of temporary layoff within any 120 days, employment is deemed to be terminated and termination pay is owed to the employee as if the termination had occurred at the start of the layoff. Exceptions to that deemed termination are if the employer continues to pay wages, or continues to pay for benefits, or if the employee enjoys recall rights under a collective agreement.

Bill 32 will change 60 days to 90 days, to permit a longer period of uncertainty about the employee's continued employment, without the employer having to pay wages or benefits.

On June 24, 2020, another change to the *Employment Standards Code* came into force. Section 63.1 was enacted by Bill 24. It applies to COVID-19-related layoffs. Only after 180 days of layoff due to COVID-19 will there be a deemed termination. Bill 32 has a housekeeping amendment to section 63.1 which replaces the new 90 days out of 120 rule with a 180 day rule in the case of COVID-19-related layoffs.

Bill 32 also permits a collective agreement to modify existing rules about how a temporary layoff becomes a termination.

Variances and exemptions

Section 74 of the *Employment Standards Code* permits the Director of Employment Standards to grant a variance or exception to an employer.

Bill 32 will permit a variance or exemption to be sought not just by an employer but also by an employer association or group of employers. It alters the variance process in section 74.1 by removing from the Director the delegation of power to ensure that a variance or exemption meets criteria established by regulations. Rather, the Director will be able to consider only whether the variance or exemption is authorized by regulation. This appears to permit variances and exemptions to be done mainly by the Government, by way of regulations that prescribe or require the variance or exemption and not just by setting criteria that the Director may consider.

Separately, amendments to section 74.1 affect the variances and exemptions that may be granted by the Minister. In addition to the applications that may be brought by an employer association or a group of employers, an application may now be sought by an individual employer. This kind of variance or exemption, previously limited to two years with no renewal, will now be unlimited in time and can be renewed.

Part 2 of Bill 32 – Changes to the *Labour Relations Code*

Financial statement requirements

In most jurisdictions in Canada, union members have a right to ask their union for a financial statement for the most recent financial year. The Alberta *Code* does not currently require unions to give a financial statement to members. Bill 32 would enact a new section 24.1 to require it but the new section goes far beyond the obligations in other jurisdictions in Canada, and represents an unusual intrusion into the affairs of unions by prescribing in detail, and permitting additional regulations about, the kinds of information that unions will have to supply in a financial statement.

The new section 24.1 will introduce a new financial statement requirement for "every trade union". The reference to "every trade union" means that it will apply to local unions in Alberta that act as bargaining agents pursuant to the *Code*. If a national or international union acts a bargaining agent pursuant to the *Code*, it would apply as well to that parent trade union. It is not clear if this requirement could otherwise affect a parent trade union that is not itself a certified trade union under the *Code*. It is possible that regulations may be made to attempt to capture all trade unions that are in any way present in Alberta.

Every trade union will have to give each member two things. The first is an annual financial statement that must include "…information in sufficient detail to accurately disclose the financial condition and operation of the trade union…" in the preceding year. The second thing is additional information that will be prescribed in future regulations. Trade unions will be required to provide these two things as soon as possible after the end of the trade union's fiscal year, and this must be done every year.

The legislation references "members" rather than bargaining unit employees or persons represented by a trade union. These statements will therefore need to be provided only to a union's members, and not to other employees in a bargaining unit if they are not union members.

Members will have the right to file a complaint with the Alberta Labour Relations Board to complain that their union has not provided the financial statement as required, or has failed to provide the required information in the statement. The Board can order the union to prepare another financial statement or to provide additional financial information

The Minister will have broad authority to make regulations to specify the information that trade unions are required to include in their financial statements. This includes the power to create different requirements for different classes of unions or particular unions. It is easy to contemplate that regulations will require that salaries and other payments to union officers or employees will have to be listed, or that all or some expenditures may be required to be listed.

The new financial statement requirements have the potential to create an enormous administrative burden on even the smallest of local unions. The information that will be required to be disclosed in a financial statement will determine the extent of the administrative burden.

Union dues for political activities – the "deduction election"

Bill 32 would enact an extensive regulatory scheme about the collection and use of union dues, fees and assessments for "political activities". The main concept in the new section 26.1 would be a requirement that every employee in a bargaining unit (not just union members) must make a deduction election before the union can collect and use dues from that person for political activities and causes.

Political dues and other union dues

Section 26.1 of the *Bill* will require trade unions to divide the "union dues, assessments or initiation fees" that they charge into two separate categories. The first category are "political dues" - the dues that a trade union will use to fund its "political activities and other causes". This category encompasses dues for:

(i) General social causes or issues;
(ii) Charities or non-governmental organizations;
(iii) Organizations or groups affiliated with or supportive of a political party; and
(iv) Any activities referred to in the regulations;

The second category of dues are dues that relate to what are described as "activities under this Act, including activities related to collective bargaining and representation of members" and other activities that are not political activities, including some that might be specified in future regulations. We can presume that these core activities will include trade union organizing expenses, collective bargaining expenses, arbitration and legal expenses, and overhead expenses incurred for the general functioning of the Union. Regulations will clarify what expenses are to be assigned to each category of dues. The proper categorization of expenses is likely to lead to disputes and extensive litigation.

One of the reasons that there will be litigation about what is political and what is not is that the collective bargaining role of unions is inseparable from their political role. The close relationship between unions and politics has long been recognized in Canadian law. In the *Lavigne* case, which was decided by the Supreme Court of Canada almost thirty years ago, the Court recognized the policy foundation for government non-interference in union spending. The issue in that case was the constitutionality of a statutory Rand formula by which every employee contributed to the expense of union representation and in exchange was protected by the union's duty of fair representation. Justice LaForest described how the Rand formula scheme contributes to the government objective of workplace democracy (emphasis added):

> 276 The second government objective I have alluded to explains why government puts no limits on the uses to which contributed funds can be put. This objective is that of contributing to democracy in the workplace. The integrity and status of unions as

> democracies would be jeopardized if the government's policy was, in effect, that unions can spend their funds as they choose according to majority vote provided the majority chooses to make expenditures the government thinks are in the interest of the union's membership. It is, therefore, for the union itself to decide, by majority vote, which causes or organizations it will support in the interests of favourably influencing the political, social and economic environment in which particular instances of collective bargaining and labour-management dispute resolution will take place. The old slogan that self-government entails the right to be wrong may be a good way of summing up the government's objective of fostering genuine and meaningful democracy in the workplace.

This passage from *Lavigne* is a useful reminder that any government interference in union spending undermines union democracy by removing from union members the right to determine how their unions will spend money.

Bill 32 requirements

After determining the amount of dues that will be allocated to each category, trade unions will be required to provide that information to every bargaining unit employee who is to be charged union dues. Trade unions must provide this information prior to charging dues or changing the amount of dues to be paid. Regulations may add other requirements for unions to provide additional information about dues.

As of a date to be specified by regulation, employees in a bargaining unit will only be required to pay the union dues that are not political dues. They will only pay political dues if they make a "deduction election" to do so. This means that some employees will pay lower union dues by deciding not to elect to pay political dues. Trade unions will also be prohibited from collecting political dues and employers will be prohibited from deducting political dues if the employee has not made a deduction election.

Employees who have elected to pay political dues will later be able to revoke that election. Unions will have to communicate to the employer each employee's decision to make or revoke an election.

Employees in a bargaining unit will have the right to seek information from the trade union that is "required or reasonably requested by the person to make an informed decision" about making or revoking an election. This right will be subject to requirements set out in regulations. This will likely permit employees to ask for details about the political activities that the political dues will fund.

Trade unions will be prohibited from taking any action or disciplinary measures against employees who do not make an election to pay political dues. Trade unions will also be prohibited from using the non-political union dues for political activities.

Any "party to a dispute" may file an application at the Board where they have a dispute about dues, a deduction election, or the information that a trade union must provide to bargaining unit employees in order for them to make an informed decision about how to exercise their election.

While the term "party to the dispute" is not defined in the *Bill*, we can presume that it will include any bargaining unit employee but also possibly employers for some kinds of complaints. The Board will have the authority to resolve the dispute, including by adjusting the amount of political dues or other union dues that are collected by a trade union, or even by suspending for a period the trade union's right to collect all union dues from employees or employers.

Bill 32 gives the government a broad authority to make regulations detailing all of these requirements. This includes the ability to make regulations about "the timing and frequency for the setting or charging of dues" as well as to define terms in section 26.1. Given the expansive scope of this regulation-making power, many of the details about how trade unions will be required to meet these obligations remain to be seen.

These new requirements will create significant financial and administrative burdens for local unions that are party to collective agreements and by extension as well, to their national or international parent organizations.

Financial impact and reduced political activities

It is clear that these requirements will have a significant financial impact on trade unions. We can assume that, when the dues election provision comes into force, at least some portion of unionized employees in Alberta will elect not to pay political dues, resulting in a decline in total dues revenue.

This decreased dues revenue for political activities will likely limit the amount and types of political, community and charitable activities in which trade unions are able to participate. No doubt this is one of the aims of Alberta's government in introducing this legislation.

Administrative burden

In addition to the burden of the new financial statement rules, trade unions will face the administrative burden of facilitating the dues election process. Trade unions will be required to collect and provide information to members in order to enable them to make an "informed choice" about how they exercise their election on political dues. An administrative process by which bargaining unit members can exercise their election and/or exercise their right to revoke their election will have to be put into place by trade unions. Finally, trade unions will have to develop processes for communicating the election or revocations of bargaining unit members to the Employer.

This administrative burden is likely to weigh most heavily on small local unions who do not have staff and/or members on full-time release, but will no doubt take time, finances and resources away from other union functions for all local unions.

Litigation

The provisions of this legislation appear designed to give rise to conflict that is likely to result in significant litigation involving trade unions about how these provisions are applied. These disputes are likely to arise in a number of areas, including:

- The sufficiency of the trade union's financial disclosure;
- The sufficiency of the trade union's disclosure about its political activities and the dues election;
- The categorization of activities as either political or non-political and the corresponding allocation of the related expenses to either category of dues.

Even if many of these complaints are ultimately dismissed, they will nevertheless tie up union resources in litigation.

Employer access to union information

Finally, the disclosure that trade unions are required to provide to members under Bill 32 will undoubtedly give employers a new and better window into union finances and union political activities, while imposing no similar requirement on employers. Furthermore, the requirement that trade unions disclose to employers whether members have elected to pay political dues or not may give employers a better sense of which employees support the union and which do not. These are obviously troubling possibilities. The availability of these remedies will make it necessary for unions to be in a position to account for spending on political activities, including the amounts that are attributable to an individual bargaining unit employee.

Union security and Rand formula

Except to the extent that the political activities election will enable some bargaining unit employees to partially "freeload" and avoid a portion of union dues, Bill 32 will leave alone the right of unions to have included in a collective agreement a Rand formula dues deduction clause. That right is in s. 27(5) of the *Code,* enacted by the NDP in 2017.

Section 27 will however be amended by adding a prohibition on an employer deducting s. 26(1)(a) amounts absent a deduction election.

Board powers and remedial certification

Bill 32 will amend the *Labour Relations Code* to expand the kinds of cases that may be heard by the chair or a single vice-chair. This includes cases in which the Chair is of the opinion that it is necessary due to an emergency.

The Board will also be able to dismiss applications that it views as filed with an improper motive or abuse of process.

Regarding remedial certification, the ability of the Board to "certify or refuse to certify" as a remedy for unfair labour practices will be removed. The existence of this remedy provides a real consequence for employers that commit unfair labour practices during union organizing. The

replacement remedy retains the possibility of a remedial certification only if no other remedy would be sufficient to counteract the effects of the prohibited practice. The presumptive remedy where an unfair labour practice results in a representation vote that does not reflect the true wishes of employees will be another vote. This will be a less effective deterrent for employer misconduct.

Applications for certification and revocation applications

Bill 32 will amend section 34, which speaks to the processing of applications for certification. The 2017 amendments to the *Code* required the Board to process applications quickly, to reduce disruptive delays and reduce opportunities for unfair labour practices to occur. The Board was able to relax those strict timelines in appropriate cases. Under Bill 32, applications will have to be conduct a vote and complete its inquiries "as soon as possible" and will have to decide whether to grant the application within six months, which can still be extended.

Similar changes are made to the procedure for revocation of bargaining rights applications in section 53.

Eliminating open periods for certification and revocation applications.

Bill 32 will amend section 37 (for certifications) and s. 52 (for revocations) of the *Code* to effectively permit an incumbent union and an employer to eliminate an open period so that another union cannot apply to displace the incumbent trade union as bargaining agent, and so that employees cannot seek a revocation. They can do this by making a new collective agreement before the scheduled open period. In the event of a future application, the Board would find it to be untimely and therefore barred if the Board is satisfied that the employees were told by the incumbent union that the result would be no open period, and the employees ratified the collective agreement. The Board could deal with complaints about whether these rules were properly followed.

There may be many good reasons for unions and employers to negotiate a collective agreement well before its expiry, and even before a scheduled open period. However, the early renewal of a collective agreement should not be available as a mechanism by which an open period may be avoided. Unethical unions and employers will be motivated to seek ways to eliminate an open period in order to avoid displacement of the unethical union. This issue was fully considered by the Board and the Courts in previous cases. The essential finding in those cases was that allowing parties to avoid the open period by way of early re-negotiation of a collective agreement and employee waiver of an open period is inconsistent with the public policy of free collective bargaining by unions that are the freely-chosen representatives of employees.

Barring a second certification application after a complaint

Bill 32 will add a new bar to applications for certification where an applicant has had a previous application refused, or has withdrawn it, and there has been a complaint about the organizing campaign and the Board finds that the applicant breached the *Code*. In those cases, the second application will be barred for six months following the refusal or withdrawal.

Picketing

Primary picketing

Most provinces leave the regulation of picketing to the Courts. Like British Columbia, Alberta regulates picketing in in the *Labour Relations Code*. The *Code* as now drafted addresses picketing in s. 84. That section says what employees are allowed to do while picketing. They can peacefully engage in picketing to persuade or endeavour to persuade anyone not to enter the employer's place of business, operations or employment, deal in or handle the products of the employer, or do business with the employer. The place of employment is defined to also include specified secondary locations in s. 84(2). Picketing in connection with a labour dispute or difference must be conducted without wrongful acts (s. 84(3)). "Wrongful acts" in the context of picketing means criminal conduct and civil torts like trespass and intimidation. The Board can regulate picketing including by orders about the locations where picketing may be done.

Bill 32 would not change these rules but it would add a new s. 84(3.1) that says, "Obstructing or impeding a person who wishes to cross a picket line from crossing the picket line is a wrongful act." There would also be added a new s. 84(7) that says, "Picketing in connection with a labour dispute or difference shall only be conducted in accordance with this section and section 84.1."

The attempt to define as a wrongful act any obstructing or impeding of a person who wishes to cross a picket line ignores the fact that the very purpose of picketing is (as recognized elsewhere in section 84) to persuadepersons not to enter a workplace or to do business with an employer. The line between persuading and impeding will be difficult to identify and will undoubtendly result in much litigation.

Secondary picketing)

Bill 32 would enact a new s. 84.1 about secondary picketing. Picketing at secondary locations listed in section 84(2) (like a site where an employer is attempting to continue to carry on business, or at an ally of the employer) can only occur pursuant to a prior Board order. Employers and businesses at proposed secondary picketing locations will have notice of applications to carry out secondary picketing. This appears similar to the BC rules about ally and common site picketing in which prior Board approval is required. The Board will be able to permit (or not permit) picketing, determine the locations at which picketing may occur and make any other declarations that it considers advisable. Where the Board permits secondary picketing, it can determine how picketing at that secondary location may occur.

Enforcement of picketing orders of the Board

Bill 32 will modify the existing process for enforcing illegal strike and illegal lockout orders. Orders made under section 84 and 84.1 about picketing must now be filed in Court at the request of a party. Service of the Board order is deemed to be service of the resulting Court order. This will speed the possible application of contempt sanctions against unions or individuals for violations of the Board's picketing order.

First contract arbitration

Bill 32 amends the first contract arbitration scheme to make clear that arbitration of a first collective agreement is to be a remedial last resort. The Board can only order it if no other remedy or remedies would be sufficient to counteract the effects of the failure to comply with the Code. More generally, the Board must find that arbitration is necessary. This important remedy that helps to establish new collective bargaining relationships will be much harder to access.

Illegal strike remedies - essential services, compulsory arbitration sectors, and emergencies

Bill 32 will add a new Division 19. It applies where a strike or lockout occurs that is prohibited by Divisions 15.1, 16 and 18 of the *Code.* Those Divisions deal respectively with essential services, sectors or employments in which compulsory interest arbitration replaces strikes and lockouts and certain declared emergencies. If an illegal strike occurs in these circumstances, the Board may as a remedy order that the employer suspend the deduction and remittance of all union dues for a period of one to six months. The affected union can apply to the Board within 72 hours of the directive, about whether a prohibited strike has occurred.

There is a parallel amendment for illegal lockouts. The parallel remedy is that the employer can be ordered to pay the union dues that the employees would otherwise pay, for a period of one to six months.

Arbitration and arbitration awards

Bill 32 makes important changes to the arbitration process. First, the preamble to the *Code*, which sets out the guiding philosophy or spirit of the legislation, will be amended to say that dispute resolution should be not just “equitable” but “equitable and expedient”.

Second, arbitrators will be stripped of their powers in section 142 to relieve against missed time limits in the grievance and arbitration process where there are reasonable grounds for the extension and the extension would not cause undue prejudice to the other party. This will preclude the arbitration of disputes where time limits have been missed. This raises opportunities for complaints about unions where errors deprive employees of the opportunity to have a dispute arbitrated, even in cases of discipline or other important workplace disputes. The *Code* in section 153(3) continues to give the Board the power to relieve against time limits where a missed time limit amounts to a denial of fair representation.

The statutory power to extend time is relevant only if the collective agreement does not provide the same power. It will be important therefore to examine all Alberta collective agreements to ensure that they provide to arbitrators the same power to extend time limits that Bill 32 will remove from section 142(3) of the *Code*.

Third, the power of arbitrators will be changed to remove a reference to “the principles of Canadian labour arbitration” as a limiter on their powers. This may permit arguments focussed on more literal interpretations of collective agreements, with less emphasis on fairness and reasonable outcomes.

The powers of the Board to review arbitration awards in section 145 are also adjusted by Bill 32. The Board is granted broader discretion to review and set aside awards, without the existing reference to grounds of fair hearing denial, or unreasonableness. The Board is also given a new power to award costs to a losing party in a review.

Unfair labour practice proceedings

Bill 32 amends section 149 (about employer unfair labour practices) and section 151 (about trade union unfair labour practices) to prohibit any punitive actions or discrimination relation to the deduction election scheme in the new section 26.1.

An amendment to s. 149(2) narrows the range of matters that are subject to a reverse onus of proof. Only where an employee is dismissed or discharged from employment will the employer reverse onus apply. Only in these cases will the employer have the legal burden to prove that a prohibited reason was not part of the decision to dismiss or discharge the employee.

In the case of trade unions, a reverse onus is imposed in the case of allegations of wrongdoing in connection with an employee either making or revoking a deduction election under section 26.1. The trade union will have the legal burden to prove that the employee was not subject to coercion, intimidation, threats, promises or undue influence because of the employee making or nor making or revoking or not revoking a deduction election.

Effective date of *Labour Relations Code* changes

Assuming that the Bill is passed as drafted at First Reading, most of the *Labour Relations Code* changes will take effect when the *Act* is proclaimed in force. Where applications made before the amendments have not been completed, the old rules in most cases will continue to apply.