

Alberta Labour Relations Code

Issue

Updates to Alberta's Labour Relations Code should ensure a level-playing field that respects democratic freedoms and the pursuit of opportunity for both employers and employees.

Background

Reform of the labour policy environment in Alberta has been on the legislative agenda for successive governments in recent years. In 2013, a review of the Alberta Construction Labour Legislation resulted in the "Sims" Report and a review of the Employment Standards Code was initiated. In 2015, Bill 6 was introduced to amend the Occupational and Health Standards for Farmers and Ranchers, and in 2016 a review of the Workers Compensation Board was launched.

The last time the Labour Relations Code (the Code) was amended was in 1988. This code represents a significant facet of the labour policy and regulatory framework in the province. Should updates to Alberta's Labour Relations code be undertaken, it is important the outcomes of any updates maintain a "level playing field" between employers and employees to ensure economic growth, business viability and democratic freedoms are respected.

There are three areas of concern regarding the Labour Relations Code:

- How employees can unionize and de-unionize through the certification process
- The use of first contract arbitration
- When can employers utilize replacement workers during strikes

If an update were to occur, (a) current issues regarding the code should be addressed to maintain a level playing field and (b) certain changes that have been implemented in other jurisdictions should be avoided as they could negatively impact democratic freedoms and economic growth.

Certification

*"A group of employees may decide they wish to be represented by a union. They may either form their own trade union or join an existing union. This union then files a certification application with the Labour Relations Board (The Board). If the application meets requirements of the Labour Relations Code, (the Board) holds an employee vote. If a majority of employees choose to be represented by that union, (the Board) certifies that union. This means the union then has the right to negotiate a collective agreement with the employer. This agreement regulates the wages and working conditions of the employees."*¹

Card check versus Mandatory Secret Ballot

In Alberta, a secret ballot vote is mandatory for certification to occur, however some jurisdictions have implemented a card check system by which no vote is held and certification is granted as long as a requisite percentage of workers sign a certification application, thereby joining the union. Under a card check system, card carrying union members are assumed to support certification of their workplace, even when this isn't the case. Moreover, workers are susceptible to coercion from union

¹ Alberta Labour Relations Board. (1996). Frequently Asked Questions: Certification: Certification – Unionizing a Workplace. Retrieved August 22, 2016 from http://www.alrb.gov.ab.ca/faq_certifications.html#Many .

representatives as they campaign to get employees to sign on. The card check certification process can undermine workers' rights to vote their true conscience by removing the use of a secret ballot.

Revocation of Certification

If employees wish to de-certify their union, the Labour Relations Code allows for the revocation of certification². The application requires a rigorous test to ensure the application represents a "free and voluntary expression of employees' wishes." Employers who have had no collective bargaining agreement for three years are able to apply for a revocation only with approval by the Labour Relations Board (The Board).

Currently the Code contains unfair barriers to the revocation of a union's certification.

- Restrictions regarding what information employers they may give their employees about the revocation process are unclear.
- The Labour Relations Board applies more rigorous tests regarding employee support than it does for applications for certification.
- The Labour Relations Board retains an overriding and undefined discretion to refuse employers applications for revocation when they have had no collective bargaining agreement for three years. This causes unnecessary uncertainty.

The Role and Authority of the Alberta Labour Relations Board

Currently, the Board has discretionary authority on certain matters. This authority creates uncertainty for employers and inhibits the ability for businesses to plan for growth. Moreover, this discretion seems to favour the facilitation of certification rather than maintaining a neutral position.

As an example, the Board may reduce the mandatory 90 day waiting period for unions making a second application for certification after their first application was dismissed or withdrawn. This allows for applications aimed at harassing employers and disrupting worksites.

Some Board rulings have indicated that employers are not allowed to communicate the impacts they perceived certification could have on their business, even when this information is honest and factual. If such communication is deemed to be an unfair labour practice, employers' ability to maintain business viability following certification is significantly reduced.

First Contract Arbitration

Once a union is certified, it must negotiate a collective agreement with the employer. Under the current provisions of the Code, employers and unions who reach an impasse in the negotiation of a first contract must use the traditional tools of a strike or lockout to break the impasse. Furthermore, the employees are able to decertify the union on the basis that it has failed to negotiate a collective agreement.

Some jurisdictions have implemented legislation which imposes mandatory arbitration on an employer and union in cases where the union becomes certified to represent employees but the parties are unable to negotiate a collective agreement. First contract arbitration undermines the competitiveness of businesses while also limiting the rights of employees to sober-second thought regarding certification.

² See Alberta Labour Relations Board. (1 September, 2002) *Alberta Labour Relations Board Information Bulletin: #13 Revocation of Bargaining Rights*. Retrieved August 24, 2016 from <http://www.alrb.gov.ab.ca/bulletins/13bulletin.html>

Replacement Workers

“When a trade union is unable to negotiate a collective agreement, they sometimes choose to strike an employer... Similarly, employers may choose to lockout their workers... Strikes and lockouts are often accompanied by picketing at the employer’s place of business.”³

When a union commences a strike, employers are currently permitted to hire temporary replacement workers in order to ensure that the business is able to continue operating. Employers are not permitted to permanently replace striking workers with replacement workers and must guarantee striking workers their positions once a settlement is reached.

This fallback position ensures that a business’ viability is maintained while it negotiates with its broader workforce and therefore, maintains employment levels. Studies have shown that legislative bans on the use of replacement workers have a negative effect on employment levels.

It is important for the long term competitiveness of Alberta’s economy that labour legislation and regulation maintains a balance between employer and employee’s rights and freedoms.

The Alberta Chambers of Commerce recommends the Government of Alberta:

1. Protect an individual’s right to vote their conscience by maintaining a secret ballot vote in the certification process.
2. Maintain that portion of current legislation that precludes the use of first contract arbitration.
3. Amend the code to clarify that employers can freely distribute information on how to revoke a certification without violating the code.
4. Require the board to apply the same “free and voluntary” rules to both revocation and certification applications.
5. Eliminate board discretion to revoke a certification if employers have had no employees for three years.
6. Prohibit new applications for certification for a fixed and longer period after the first one is dismissed or withdrawn.
7. Amend the code to make it clear that the board cannot relax the “appropriate bargaining unit” rules merely to facilitate certification.
8. Make the code clear on the fact that employers can communicate the impact of certification on their business without committing an unfair labour practice, as long as their comments are honest and factual.
9. Prevent business closures and job losses by maintaining the employer’s right to hire temporary replacement workers during labour action.

³ Alberta Labour Relations Board. (1996). Frequently Asked Questions: Strikes and Lockouts: Strikes, Lockouts & Picketing. Retrieved August 22, 2016 from http://www.alrb.gov.ab.ca/faq_strikes.html .