



700 - 9990 Jasper Avenue,  
WORLD TRADE CENTRE EDMONTON  
Edmonton, Alberta Canada T5J 1P7

tel 780.426.4620 fax 780.424.7946

## Proposed Amendments to the Alberta Labour Relations Code

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### **Background:**

The last time the Labour Relations Code (“the Code”) underwent any substantial amendments was in 1988. Since that time, it has become clear that the Code, in its wording or in its application, leads to unfair or unbalanced consequences. It has been identified that there needs to be a “level playing field” among parties affected by the Code and certain matters where clarity in the Code is required. Below are specific areas of the Labour Relations Code requiring reconsideration and revision:

### **Certification:**

The Code currently provides that a second application for certification by the same union cannot be made within 90 days of the time the first was dismissed or withdrawn. The Labour Relations Board can override this and they have on a number of occasions in the past. The possibility clearly exists for applications that are merely filed for harassment purposes. The Ontario government also saw the need for changes in this area. Certification applications are very disruptive to the worksite. We propose that there should be no new applications for certification for a fixed and longer period after the first one is dismissed or withdrawn.

The Labour Relations Board has ruled in several cases that they will relax the ordinary requirements for a union to certify an “appropriate bargaining unit” if it will facilitate certification. For example, when several retail stores would be an appropriate unit because of daily interactions, the board has sometimes allowed certification of one store. We propose that the Code be amended to make it clear that the board cannot relax the “appropriate bargaining unit” rules merely to facilitate certification.

A union must show support from 40 per cent of the bargaining unit before they are entitled to a secret ballot vote on certification. To ultimately gain a certification they need to have a majority voting in a secret ballot vote on their side. There have been cases where the union, which barely gains the 40 per cent, gains a vote, which they ultimately lose.

We propose that the threshold support needed for an application change from 40 per cent to 45 per cent, as it is in B.C. In fact, there is a strong argument that the union should have to prove they have the necessary majority support.

Unions can show support for certification by petition evidence or applications for membership or by proving membership in good standing. We propose that “membership in good standing” be eliminated as a means of proving initial support, since it does not show support for the certification of the specific employer. There have been several

instances where employees were members in good standing of a Union but they opposed certification of their employer.

In British Columbia, applications for certifications based on membership must be accompanied by an individual's written expression of support for the application. This is recognition of the same problem.

The Labour Relations Code is ambiguous about the right of employers to communicate with their employees concerning a certification application. Board decisions have suggested that employers who were merely addressing the impact they perceived the certification would have on their business could be guilty of an unfair labour practice. We propose that the Code should make it clear 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.

#### **Revocation of Certification:**

Currently, employees are only free to revoke a certification during the 23rd and 24th months of a collective agreement. Certifications of a non-union employer can be obtained at any time. We propose that the window for revocation applications be wider.

Ontario passed legislation that requires employers to post and distribute information to their employees on how they can apply to revoke a certification. We propose that the Alberta Code be amended to clarify that employers can freely distribute such information, if they choose, without violating the Code.

The Labour Relations Board, through its administrative rules (information bulletins), tests employee support for revocation much more rigorously than it scrutinizes union applications for certification. This is not fair. It requires the employees to establish that the application "represents a free and voluntary expression of employees' wishes." We propose that the board be required to apply the same rules to both types of applications. The union does not have to convince anyone that its application supporting certification is "a free and voluntary expression of employees' wishes." The employees should not have this hurdle either. Ultimately, each is decided by secret ballot vote in any event.

The Labour Relations Board permits employers to revoke a certification if they have had no employees for three years. However, the board retains an overriding and undefined discretion to refuse their application. This causes unnecessary uncertainty and should be clarified. We propose that this board discretion be eliminated. Employers should be secure in knowing that they can end a relationship if they truly had no employees for three years.

#### **Successorship/Transfer of Business:**

For several years now there has been considerable uncertainty concerning the question of whether you could inherit a union's collective agreement when you acquired a business from the provincial government. This, for example, led to a dramatic reduction in the government's return on the sale of the ALCB assets. This uncertainty continues because of the Saddle Hills decision. We propose that this uncertainty be put to rest by amending the Code to make it clear that successorship declarations are not available when a business moves from the public to the private sector. The Court of Appeal itself recognized that it would be helpful to have more certainty in the legislation.

The successorship provision in the Labour Relations Code was designed to prevent employers from dodging bargaining rights they had with a union. However, the provision has come to mean that some businesses cannot be sold because purchasers do not want to take the risk of inheriting a certification and a collective agreement. The purpose has been forgotten. We propose that the Code be amended to restrict the availability of successorship consequences to situations where the employer is trying to avoid a collective bargaining obligation.

**Picketing:**

The Labour Relations Board ruled in *Brewer's Distributors Ltd. et al.* [2000] that the Charter of Rights and Freedoms overrode the Labour Relations Code provision that clearly restricts lawful picketing to the place of employment of the employees on strike. The effect of the ruling was to permit picketing of "allies" of the employer on strike. The board also adopted a broad definition of "ally" that has caused considerable uncertainty. We propose that the legislation be amended to make it clear that the rules relating to picketing also prohibit ally picketing.

The Court of Queen's Bench in *CLR-A and PCL et al* (2001, Q.B.) quashed a Labour Relations Board decision in which the board implicitly rejected 40 years of jurisprudence on common situs picketing and ruled that they could permit picketing even if it was otherwise unlawful, as part of their power to regulate. This should be made clearer. We propose that the Code be amended to clarify the rules relating to picketing as they apply to common situs picketing e.g. construction sites at operating facilities and to codify this recent court decision.

**Right to Strike/Lockout:**

Strikes and lockouts can have profound impacts on third parties, especially in areas where there is an effective monopoly on services. Some services are essential and societal and third party interests justify elimination of the use of the strike or lockout weapons. Arbitration is a far more sensible problem-solving mechanism than the blunt instrument of strike or lockout. The legislature should continue to declare that certain sectors do not have the right to strike or lockout if they are deemed an essential service and/or model the provisions in the Canada Labour Code as it relates to essential service declarations.

**The Alberta Chambers of Commerce recommends the Government of Alberta:**

1. Prohibit new applications for certification for a fixed and longer period after the first one is dismissed or withdrawn;
2. Amend the Code to make it clear that the board cannot relax the "appropriate bargaining unit" rules merely to facilitate certification;
3. Change the threshold support needed for an application from 40 per cent to 45 per cent;
4. Eliminate the certification requirement "membership in good standing" as a means of proving initial support;
5. 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;

6. Widen the window for revocation applications;
7. Amend the Code to clarify that employers can freely distribute information on how to revoke a certification without violating the Code;
8. Require the board to apply the same “free and voluntary” rules to both revocation and certification applications;
9. Eliminate board discretion to revoke a certification if employers have had no employees for three years;
10. Create certainty by amending the Code to make it clear that successorship declarations are not available when a business moves from the public to the private sector;
11. Amend the Code to restrict the availability of successorship consequences to situations where the employer is trying to avoid a collective bargaining obligation;
12. Amend legislation to make it clear that the rules relating to picketing also prohibit ally picketing;
13. Amend the Code to clarify the rules relating to picketing as they apply to common situs picketing; and
14. Continue the practice of having the legislature declare that certain sectors do not have the right to strike or lockout if they are deemed as an essential service, and/or model the provisions in the Canada Labour Code as it relates to essential service declarations.