Alberta Federation of Labour

LABOUR LAW

Introduction

Earlier this year, we saw attacks on labour rights and labour laws begin in Wisconsin after the election of a Republican governor and state legislature.

Not content with seeking cuts to pay, benefits and working conditions, these Tea Party Republicans sought to eliminate the right of unionized public-sector workers to engage in collective bargaining in all but very limited areas. The conflict soon spread to other states including, Pennsylvania, Ohio, Indiana, Tennessee and New Jersey.

Meanwhile, many more states already have or are trying to adopt "right-to-work" laws that are designed to weaken the labour movement. Right-to-work legislation, which makes it much harder for unions to collect dues, has been filed in 12 states. This is in addition to the 22 that already have such laws on the books.

Alberta is not immune to this. Indeed, public-sector unions in this province have already seen a barrage of attacks from right-wing think tanks and the media.

The billionaire Koch brothers, the paymasters of the Tea Party, have significant business interests in this province. They are responsible for receiving and handling about 25 per cent of the oil sands crude sent to the U.S. and they own Calgary-based Flint Hills Resources Canada. Don't expect these guys to stay out of our politics. In fact, they may already be funding the Wildrose Alliance and Tory leadership candidates (we can't know for sure because both parties refuse to reveal their donors).

At the Alberta Progressive Conservative policy convention in October 2010, a resolution to give workers in a bargaining unit the right to opt out of paying dues in certain circumstances was only narrowly defeated, mainly due to active and vocal opposition to the resolution by trade unionists. Barbara Yaffe, a columnist with the Vancouver Sun, recently wrote a column supporting the position of former Reform MP Herb Grubel who suggests that public-service unions be denied the right to strike and bargain wage increases. This column appeared in major newspapers in Calgary and Edmonton.

Strong labour laws provide the framework in which unions negotiate collective agreements for their members. Without labour laws, or with weak labour laws, unions simply cannot negotiate good agreements.

It is the existence of labour laws that has helped the labour movement create a strong middle class. Labour laws enable unions to forge the conditions where people can work hard, earn a fair and decent wage and make a good life for themselves and their children. It is thanks to labour laws and unions that we have 40-hour working weeks, paid overtime, paid vacation, benefits, pensions, minimum-wage levels, workplace health and safety codes. All of these improvements to working lives had been won at the collective bargaining table by union negotiators working within the boundaries set by labour laws.

Clearly, however, the attack on trade unions, on the middle class and working families, is targeted and intense and we must be vigilant. In Alberta, we should expect more attacks on our labour laws and we must be ready.

While we, in Canada, may feel secure about our rights to bargain collectively because of our Constitution and the ruling of the Supreme Court of Canada in the case of *B.C. Health Services*, we must not assume that are labour laws are safe from attack.

For example, the federal Liberal government, in an attempt to appease Conservative voters, blocked unions from financing political parties. In British Columbia, Saskatchewan and Ontario, conservative parties took direct aim at labour laws in the first months of power, including such measures as getting rid of card-based certification, removing the right to strike from some public servants and allowing for unfair employer coercion during the certification process.

As members of the labour movement we must be aware that what is at stake here is much, much more than public-sector workers and their bargaining rights. The attack on the labour movement is an attack on the wages and working conditions of all workers, public or private, unionized on non-unionized. It is an attack on democracy, because without unions, corporations will be able to engineer a wholesale corporate takeover of our democratic system by being the only ones with the funds to support election candidates.

So, not only must we fight to protect the labour laws we currently have, we need to press for better. Compared to other provinces, Alberta lags behind in a number of key legislative areas.

In Alberta, we should be particularly concerned with the laws surrounding our certification process as well as the resolution of the first collective agreement following certification. In the first case, we would like to see an allowance for card-check certifications, allowances made for automatic certification when unfair labour practices are used during certification and ensuring that certain vulnerable workers (farm workers and domestic workers) are given the right to form unions. In the second case, we need laws that would provide for first collective agreement arbitration as well as provide a means of ensuring that dues are collected from every worker in a bargaining unit.

Strong labour laws that protect the interests of workers are an important tool in the fight to defend the middle class, but Alberta does not have good labour laws. We must

fight for better laws that allow unions to better deliver the middle-class life Albertans want and need.

Certification Process

1. *Card Check Certification*

Currently, the *Labour Relations Code* (the Code) of Alberta states that a union must have written support from at least 40 per cent of the employees in the proposed bargaining unit before it will consider an application. This written support can be no older than 90 days from the date of the application. Then, the Labour Relations Board (LRB) will schedule a date for a subsequent secret ballot vote "as soon as possible." In Alberta, the general rule is that this vote is held within 7 to 21 days of the application being filed, although the timeline is not specified. No matter how high the written support is, a vote must be held and must result in support of more than 50-per-cent support of those who vote before the union can be certified (Sections 33 and 34 of the Code).

The main problem with this process is that workers are forced to express their opinions twice within a relatively short time period, first in the period before the application and then again at the secret ballot vote. As there is an unspecified lag period between the application and the second vote, the employer and/or other outside forces have an opportunity, and often take it, to attempt to convince workers to vote against the union. Often, the methods they use include intimidation, threats and coercion and would be considered unfair labour practices.

Other jurisdictions in Canada have a fairer certification process. The *Canadian Labour Code* (sections 28 and 29) allows for certification of a union if a majority of the workers in a proposed bargaining unit give written support (i.e., sign a card). In Manitoba, the threshold is a bit higher (65 per cent). However if it is met, a vote is not required. Manitoba also restricts the time lapse between application and a secondary vote, when it is required, to seven days. In Ontario, that time lapse is only five days.

In Alberta, we would like to see the Code changed to require that the LRB automatically certifies a union that applies for certification with written evidence of support of a majority of the employees in a proposed bargaining unit. Furthermore, when a union has written evidence of support of between 35 and 50 per cent of the workers, their application for certification should be considered and a secondary vote held. When a secondary vote is needed (because the 50-per-cent threshold of written support has not been met) a strict timeline, no longer than seven days, should be in place to complete that vote.

2. *Automatic certification when unfair labour practices are proven*

Currently, there is only one method for a union to be certified which is described previously. It does not matter what tactics an employer uses to get a worker to change her/his vote – their actions will not result in automatic certification. The employer may resort to unlawful or unfair practices to stop the momentum of a union's organizing drive and/or to scare and pressure employees before the vote and while the LRB can give remedies for the unlawful acts, it can never impose certification even when it is convinced that the employees can no longer form independent judgments about the union. There is no real deterrent to employers not to use these tactics.

The *Canada Labour Code*, the *Ontario Labour Relations Act* and the *Manitoba Labour Relations Act* all allow the Labour Relations Boards to automatically certify a union when it finds proof of unfair labour practices being used by employers during a certification process.
Alberta's Code should be revised to allow the LRB the discretion to grant automatic certification when it finds an unfair labour practice has occurred and when it finds that otherwise the employees would have likely supported the union.

3. *Certification of vulnerable workers*

In Alberta, agricultural workers and domestic workers are specifically excluded from the application of the Code. In other words, these two sectors are specifically targeted as the only workers in Alberta who do not have the right to form a union.

These sectors have some of the most vulnerable and most often exploited workers who need the representation of unions to improve their working conditions. The initial step to rectifying this travesty is simple: an amendment to the Code to remove clauses (e) and (f) from Section 4(2)[1] that specifically exclude them.

---

[1] *"This Act does not apply to … (e) employees employed on a farm or ranch whose employment is directly related to (i) the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, domestic cervids within the meaning of the Livestock Industry Diversification Act, poultry or bees, or (ii) any other primary agricultural operation specified in the regulations under the Employment Standards Code or to their employer while the employer is acting in the capacity of their employer; (f)employees employed in domestic work in a private dwelling or to their employer while the employer is ordinarily resident in the dwelling and acting in the capacity of their employer. …," Alberta Labour Relations Code, Section 4(2)(e)(f),* http://www.alrb.gov.ab.ca/ALRB_Code.htm

First Collective Agreement Resolutions

1. *First Contract Arbitration*

   Even when a union has successfully managed to jump through all the hoops of the certification process that have been described previously and obtained a certification, the employer still has another chance to derail the union and that is through creating unreasonable roadblocks during the first contract bargaining process. As there is no law that allows the LRB to require that the first collective agreement be settled by arbitration, the employer is able to sufficiently delay the process until there is the possibility of a decertification application or a raid by another union [under sections 52(3)(a)[2] and 37(2)(b)[3] of the Code, respectively].

   Tactics that employers commonly use include refusing to recognize the bargaining authority of the union, using unreasonable bargaining approaches, taking unreasonable or uncompromising bargaining positions, committing unfair labour practices and/or bargaining in bad faith. They can use any or all of these tactics without fear since the threat of arbitration does not exist.

   Once again, Canada, Ontario and Manitoba have better policy in their labour act/codes. If Alberta were to follow their lead, the Code would allow the LRB to direct that the first collective agreement be settled by arbitration in circumstances that the board feels such an order is warranted, including such actions as where there has been a refusal to recognize the bargaining authority of the union, bargaining positions have been uncompromising without reasonable justification and the employer failed to make reasonable and expeditious efforts to conclude the collective agreement.

2. *Dues Deduction (Rand Formula)*

   Many union members have heard about "right to work" laws in certain states in America that allow workers to opt out of paying union dues in spite of benefitting from the terms of the collective agreement that their co-workers, who are union members, bargained for them. Similar ideas have been floated in Canada, or some form of them (e.g., allowing union members to opt out of contributing to union expenses other than for the purposes of bargaining). In addition, there is no current provision in the Code to require that collective agreements include, should the union request it, a clause that requires each employee in the

---

[2] **"…** An application for revocation of bargaining rights may be made by the employees in the unit (a) if no collective agreement is in force in respect of any of the employees in the unit, at any time after the expiration of 10 months from the date of the certification of the trade union, and at any time if the trade union is not certified …," *ibid*, Section 59(3)(a), http://www.alrb.gov.ab.ca/ALRB_Code.htm

[3] **"**An application for certification may be made … (b) if a bargaining agent has been certified in respect of any of the employees in the unit, at any time after the expiration of 10 months from the date of the certification of the bargaining agent, unless a collective agreement has been entered into by the bargaining agent …," *ibid*, Section 37(2)(b), http://www.alrb.gov.ab.ca/ALRB_Code.htm

bargaining unit, whether or not they are a union member, to pay union dues by way of payroll deduction and employer remittance.

Simply put, unions require financial support to allow them to properly act as the exclusive bargaining agent on behalf of the members of the bargaining unit. The union's duty to fairly represent the employees in the bargaining unit applies to all employees, whether or not those employees are members. It is unreasonable to expect unions to have to fund the representation of such free riders out of the dues paid by union members.

The prospect of forcing the union to collect the dues directly from its members without the benefit of a payroll check-off system, where the employer automatically deducts union dues from the worker's pay cheque and remits them to the union, is extremely costly and difficult for unions to administer.

The result of hampering the union's financial abilities is that it may be unable to provide good representation, which could potentially open it up to a decertification application – good for the employer, not so great for the worker.

The Code should include a provision requiring, if the union requests it, the employer to agree to a clause in the collective agreement requiring the mandatory remittance of union dues by way of payroll deduction and remittance to the union by the employer, making an appropriate allowance for religious exemptions to take into account human rights legislation.

Conclusions and Action

Good labour law, while often confusing, intimidating and incomprehensible for many of us, is fundamental to achieving our goals as trade unionists. We are unable to adequately represent our members on the many workplace issues that come up each and every day if our unions are adequately financed. Workers' perspectives will be ignored by our governments who are constantly and effectively lobbied by well-funded corporations if the labour movement is not united, forceful and persistent – and it cannot be so if it becomes nearly impossible to certify.

There is a reason that right-wing governments move quickly and decisively to minimize the influence of labour and why they have spent so much time and energy making the very word "union" derogatory. They recognize that we are the strongest obstacle between them and being able to achieve their goals: maximizing corporate profits by reducing costs, the largest of which is payroll.

Unionists have different values. We believe that workers have the right to a fair share of the benefits of the work we provide. But we need to continue to be vigilant against attacks on our abilities to ensure that we get that share, which means we have to pay attention and push for stronger labour laws.

There is a growing sentiment amongst the labour movement in Alberta to advocate for a full-scale scrapping of our current labour code in order to rebuild it into something closer to what we want. Others fear that this would open us up to even worse laws than we have currently (the old "better-the-devil-you-know" argument). This is a debate that we will need to have in the coming years.

For now, the AFL proposes significant changes in limited areas. The AFL and its affiliates will advocate for amendments to the *Alberta Labour Relations Code* that will ensure:

- Automatic certification with written support of 50 per cent or more from workers in a proposed bargaining unit;
- A certification vote be held within seven days of an application for certification;
- The Labour Relations Board has the discretion to grant automatic certification when it finds an unfair labour practice has occurred and when it finds that otherwise the employees would have likely supported the union;
- That agricultural and domestic workers are no longer excluded from the Code by removing sections 4(2)(e) and 4(2)(f);
- allow the LRB to direct that the first collective agreement be settled by arbitration in circumstances that the board feels warrant such an order, including such actions as where there has been a refusal to recognize the bargaining authority of the union, bargaining positions have been uncompromising without reasonable justification and the employer failed to make reasonable and expeditious efforts to conclude the collective agreement; and
- Provisions requiring, if the union requests it, the employer to agree to a clause in the collective agreement requiring the mandatory remittance of union dues by way of payroll deduction and remittance to the union by the employer, making an appropriate allowance for religious exemptions to take into account human rights legislation.