

December 1, 2015

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The Alberta Federation of Labour thanks the essential services consultation team for the opportunity to provide our follow up thoughts and make supplementary submissions. The consultation meetings in which we participated were productive and the discussions between all the parties on each side were helpful in tailoring and expanding on some of our recommendations. As such, please find our additional comments below, organized as per the original Discussion Document provided by the government.

Firstly, the AFL wishes to reiterate the importance of a new conceptual framework for essential services and the right to strike, where the principle is seen as balancing public health and safety with legitimate labour relations purposes in a manner which is minimally impairing to those underlying associational rights. As such, the presumption must always be that all employees have the right to strike at all times and that only job functions, but not specific employees, classifications or units might be essential to that public safety interest. Since the effect of requiring an employee to perform all or part of her job during a strike is to restrict her access to that right to strike, the onus should be on the employer to establish that need.

The corollary to that presumption is that new essential services legislation should be crafted narrowly around remedying the unconstitutional blanket ban that currently exists. Any employer or union who previously operated without the need to be included in an essential services model or to create agreements regulating or modifying the right to strike should not need any legislative changes to give full effect to those rights to freedom of association.

In relation to this basic framework, during the consultation sessions, we noticed a few points where there was some expanded discussion or disagreement amongst parties on specific questions or issues.

The first issue is the importance of transitional provisions for unions currently in bargaining at the time the new essential services legislation comes into force. The AFL reiterates again that the right to strike is constitutionally protected and a fundamental part of the fair and efficient operation of our labour relations regime. The presumption is that all employees have the right to strike and the ability to deny an employee their access to that right must be strictly limited and proven by the employer as necessary for the life, health and safety of the public. As such, any transitional provision which extends the former, unconstitutional ban or restriction on the right to strike is not appropriate and is counterproductive to encouraging the development of healthy bargaining relationships.

The AFL would like to clarify our approach to amendment and termination of essential services agreements. The AFL believes in the importance of an efficient and streamlined process for the negotiation and maintenance of essential services agreements, but we also believe these must be responsive

to the needs and wishes of unions and employers. In the interest of achieving this balance, and based on the presumption that all employees have the right to strike, the onus must again be on the employer on an ongoing basis to justify any deprivation of those ongoing rights. In that case, the parties should have the ability to amend an agreement at any time by mutual consent, but where there is disagreement, the parties can use the assistance of the essential services commissioner, board or adjudicator, with the onus on the employer to prove that any essential services designation remains necessary. This would allow the agreements to roll over, saving time and resources where possible in the objective of efficient labour relations, while requiring that any agreement which restricts the right to strike of employees who are, by virtue of changes in circumstance, no longer essential to the life, health and safety of the public be amended or terminated. In no case should an essential services agreement be available for amendment during a lockout or strike unless with the agreement of both parties.

We reiterate that there should be no standard, legislated threshold to determine when a strike is considered ineffective within its labour relations purpose and instead recourse must be provided to mandatory interest arbitration. As the realities of this determination vary considerably depending on the unit, the sector, the union, the workplace, the employer or any number of other factors, this must be decided in each context. Since the union is the party who bears the deprivation in these cases, it should be within the power of the union to make this determination.

Furthermore, our earlier submission did not fully express our stance on the question of penalties. Alberta has one of the most oppressive legislative regimes in terms of penalties and fines to unions and an imbalance in the risks and penalties to employers. In no case should penalties against unions be expanded. Unions already bear a larger economic risk in striking and there are already a number of barriers and disincentives to prevent illegal striking. High penalties serve no purpose other than to tip the balance of our labour relations regime further in favour of the employer.

Finally, the AFL would like to make additional recommendations based on some of the discussions. While some unions bargain into their contracts the right for employees not to cross legal picket lines, the AFL recommends that legislation include protection against employers directly or indirectly compelling a union or employee from doing so. Similarly, we reiterate the need for bans on replacement workers and add the need to prohibit employers from bringing in workers from other provinces to fulfill the duties of striking employees. All of these rights go to the heart of underlying labour relations purpose of a withdrawal of labour, which is to better balance economic power between employer and union with the ultimate goal of efficiently completing a collective agreement. When employers are able to circumvent this power, the right to strike is undermined.

Once again, the Alberta Federation of Labour thanks the government and the other contributors in the essential services consultations for the opportunity to present our thoughts and to participate in this process. We look forward to ongoing work in protecting the rights of all workers in Alberta.