

# AUPE submission to the MLA Review Committee

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On the  
**Alberta Labour  
Relations Code**



## ● **Part I – Executive Summary**



In response to the request of the MLA Review Committee studying the Alberta Labour Relations Code, the Alberta Union of Provincial Employees submits this brief calling for changes to the Code and related changes to the Public Service Employee Relations Act. AUPE, as Alberta's largest union and the main union representing public sector employees, has for practical reasons restricted its recommendations to three principal areas: certification of unions, methods of dispute settlement, and the application of relevant legislation. To limit serious unfair labour practices by employers before a certification is granted, AUPE recommends that Alberta introduce automatic certification if an

employer violates the code. AUPE further recommends that Alberta introduce first-contract arbitration to prevent employers from bargaining in bad faith. AUPE also argues that interest arbitration as set out under PSERA and the Code is unfair and biased against union members. New legislation should be drafted that gives public sector employees access to full collective bargaining, including the right to strike, and which fairly defines essential services. Finally, AUPE recommends that for reasons of consistency and fairness, PSERA apply only to direct employees of the provincial government, while all other unionized employees come under the Code.

## ● **Part II – AUPE's Interest**



The Alberta Union of Provincial Employees is Alberta's largest union, representing more than 48,500 members in four sectors: direct employees of the provincial government; employees of educational facilities; employees in public and private sector health care; and employees of boards, agencies, local governments and private companies.

As such, AUPE members and staff have broad experience working with the Alberta Labour Relations Code, the Public Service Employee Relations Act and other relevant legislation. In addition, AUPE must deal with a wide variety of employers, from the provincial govern-

ment, which is sophisticated and mature in its dealings with its union, to private sector employers willing to break or bend any rule or law to prevent having to deal with a union. AUPE desires a labour relations regime in Alberta that is fair to unionized employees and working people seeking union representation, and that also properly respects the rights of employers.

Finally, while all AUPE members who are employed directly by the provincial government fall under PSERA, members in AUPE's other three sectors can come under PSERA or the Code in a pattern that is arbitrary and often without much logic.

## ● **Part III – Introduction to AUPE’s Recommendations**



Like any union, AUPE has a long wish list relating to its concerns with Alberta labour legislation. We recognize, however, that the MLA Review Committee has been charged with the responsibility of considering “fine tuning” to Alberta’s principal labour legislation. For that reason, we have restricted our remarks to three main categories.

These categories relate to the certification of trade unions, the mechanisms available to settle disputes when collective bargaining fails, and the application of the Public Service Employee Relations Act and the Alberta Labour Relations Code.

In each case, AUPE believes strongly that the recommendations it is putting forward to the committee are important and would provide real, tangible benefits to the province of Alberta and its citizens. Each of these

recommendations would have the effect of ensuring that union members or prospective union members are treated fairly and within the law without any effect on the theoretical rights of employers as set out in existing Alberta legislation.

The changes proposed by AUPE would, in some cases, make it more difficult for employers to defy or ignore the law. But no good can come in civil society from setting out laws and codes of practice and then allowing some privileged employer groups to violate the law at will with no risk of a meaningful penalty.

AUPE also strongly believes that the changes proposed here would decrease the likelihood and severity of labour strife, which we believe is exacerbated by regulations that cannot be enforced properly or which are blatantly unfair in the eyes of working people.

## ● **Part IV – Certification of Unions**



AUPE’s first main area of concern with the Alberta Labour Relations Code comes in the sections that deal with union certification of an employer – Sections 32-41. The Public Service Employee Relations Act deals with the question of union certification in Section 16.

When a union applies to become a certified bargaining agent in Alberta, Sections 148 and 149 of the Code and Section 45 of PSERA prohibit certain serious unfair labour practices by employers, employers’ organizations and their agents. For example, employers may not discriminate against an employee because he or she is a member of a trade union, has supported a trade union or has participated in a legal strike. Further, they may not impose employment conditions that restrain employees from union membership, or seek to threaten or dismiss an employee to restrain their membership in a union. However, these two pieces of legislation give the Labour Relations Board almost no practi-

cal authority to remedy such breaches of law by providing automatic certification. In fact, Section 17(2) of the Code and Section 3 of PSERA, in effect, prohibit such a remedy.

AUPE submits that implementation of such a remedy would go a long way to preventing the employer mischief and malfeasance inherent in union organizing drives where an employer does not want a union. AUPE recommends that such a remedy – automatic certification – be included in any changes to Alberta labour legislation.

Another remedy to prevent employer mischief during union organizing drives is the return to direct certification. Prior to changes to the Code in 1988, unions could apply for certification with proof of support in the form of signed membership applications and/or proof of membership in good standing. If that added up to more than 50 per cent of the employees at the

## ● Part IV – Certification of Unions



worksite, the union would receive direct certification without a vote being required.

Under current legislation, unions must apply showing proof of support. A vote to confirm the support must then be scheduled. Most employer mischief occurs during the waiting period before the vote.

AUPE recommends a return to a legislative regime that would allow direct certification without a vote in cases where support for the union is self-evident.

Under Section 60 of the Code, when a union first becomes certified with an employer, that employer is legally obligated to bargain with the union in good faith. Again, however, there is no remedy of any significance if an employer does not bargain in good faith.

For example, if an employer engages in “surface bargaining” with no real intent to conclude a collective agreement (a strategy that at the best of times is difficult to prove), the Labour Relations Board has no ability to impose a collective agreement as a remedy. This is particularly prevalent in a situation where there is no bridging of a previous agreement protected by a freeze period (Section 147(3)). This situation is referred to as bargaining a first agreement and is protected only by a limited freeze of a maximum 90 days (Section 147(1&2)). In the current situation, without a collective agreement and after the freeze period expires, unions have no real or practical ability to represent their mem-

bers – despite the stated intent of the law.

In some other jurisdictions, legislation provides for interest arbitration to take place if the parties reach an impasse in negotiations for a first collective agreement. In AUPE’s opinion, binding first-contract arbitration is essential and reasonable. It would provide remedies, and prevent employers from refusing to bargain in good faith in hopes of stalling bargaining results until employees give up or lose faith in the union.

AUPE recommends the inclusion of first-contract binding arbitration in the Alberta Labour Relations Code.

Further, automatic dues deduction by employers and grievance arbitration protection against discipline and dismissal allegedly for “just cause” should be embedded in the Code, coming into effect as soon as certification is granted. This would ensure that the union could properly represent its new members and have the financial resources to do so. This is imperative for the union to provide representation in the period between certification and the signing of a first contract.

AUPE recommends that automatic dues deduction by employers be embedded in the Code, coming into effect as soon as certification is granted.

AUPE recommends that grievance arbitration protection against discipline and dismissal allegedly for “just cause” be embedded in the Code, coming into effect as soon as certification is granted.

## ● Part V – Method of Dispute Settlement



Under the Code, the method of dispute resolution when collective bargaining reaches impasse is mixed. Some certifications have the right to strike and the employer the right to lock out. Other certifications must adhere to interest arbitration by way of a compulsory arbitration board (Section 96).

Under PSERA, the only legal method of resolving an impasse in collective bargaining is interest arbitration. Further, under PSERA Sections 30-43, arbitration is tightly restricted. PSERA does not allow the compulsory arbitration board to deal with organization of work, assignment of duties, numbers of employees, job evalu-

## ● Part V – Method of Dispute Settlement



ation and allocation, selection, promotion, training, transfer or pensions – all matters that are obviously of significant concern to employees and their union.

AUPE submits these provisions are arbitrary and simply do not make good labour relations sense. It is an indisputable fact that many working people in Alberta view the compulsory arbitration system as biased in favour of employers and unfair. History shows removing of the right to strike does not prevent strikes. In fact, it shows that illegal strikes are simply more volatile and damage labour relations between the parties for years to come.

AUPE recommends that both of Alberta's principal pieces of labour legislation – the Code and PSERA – be amended to allow employees the right to strike, with provisions added that would fairly define limited essential services.

AUPE also submits that Section 114 of the Code, which allows employers to discontinue union dues collections if an illegal strike has taken place, constitutes double jeopardy. This penalty can be exacted at the same time the courts are penalizing the same union for the same action. AUPE recommends that Section 114 be removed from the Code.

## ● Part VI – PSERA and the Code



The Public Service Employee Relations Act was originally drafted to govern labour relations for direct employees of the provincial government. However, at present it includes numerous groups that are not direct provincial government employees.

The unintended result of this evolutionary change is inconsistent and illogical application of the law, resulting in unfairness to unionized employees.

This situation can be remedied by redrafting the legislation so that all direct government employees would remain under PSERA, but all other employees would come under the Code.

AUPE recommends that this change be made and that, further, the transition be carried out in a manner consistent with the provisions of the transitional section of the Regional Health Authorities Act (Section 27).

AUPE has further concerns with the application of PSERA to union members and others who are not direct employees of the provincial government. AUPE believes that the exclusion of employees from unionization in Section 12 of PSERA is too broad. (Section 12

refers in detail to the Public Service Act. The Public Service Act applies only to provincial government employees. However, Section 12's implementation, over time, has also based exclusions of non-provincial government employees on the same criteria, which are significantly more limiting than the criteria set out under the Code.)

Furthermore, AUPE believes that the arbitrability of items in dispute in collective bargaining – set out in Section 30 of PSERA – is excessively limiting when compared with the Code. Under the Code, all matters can be practically dealt with in collective bargaining and interest arbitration. Under PSERA, this is substantively restricted.

AUPE submits that these inconsistencies can and ought to be rectified by placing all non-provincial government employees under the same legislation – the Alberta Labour Relations Code.

For government employees who remain under PSERA, in the event that they are not given the right to strike, AUPE recommends that all matters should be subject to interest arbitration, as is now the case under the Code.

## ● Part VII – Conclusion



AUPE thanks the MLA Review Committee for the opportunity to make these key recommendations on labour law in Alberta.

AUPE believes that the recommendations set out in this brief will make the treatment of working people in Alberta – both unionized and non-union – more fair without harmful impact on the legitimate rights of employers. AUPE believes, moreover, that where Alberta labour law sets out required practices for

employers, but does not give the Alberta Labour Relations Board the ability to enforce those rules in a meaningful fashion, respect for the law is diminished.

In addition, AUPE believes that consistency of application is important for both administrative and constitutional reasons, and that Alberta labour law should be applied in a consistent manner. AUPE's recommendations, summarized below, would achieve these goals.

## ● Part VIII – Summary of AUPE Recommendations



- 1) **AUPE recommends** that a meaningful remedy – automatic certification – to unfair labour practices intended to hinder or prevent the ability of working people in Alberta to certify a union as their bargaining agent be included in any changes to Alberta labour legislation.
- 2) **AUPE recommends** a return to a legislative regime that would allow direct certification of a union without a vote in cases where support for the union is self-evident in a majority of the proposed unit.
- 3) **AUPE recommends** the inclusion of first-contract binding arbitration in the Alberta Labour Relations Code.
- 4) **AUPE recommends** that automatic dues deduction by employers be embedded in the Code, coming into effect as soon as certification is granted.
- 5) **AUPE recommends** that grievance arbitration protection against discipline and dismissal allegedly for “just cause” be embedded in the Code, coming into effect as soon as certification is granted.
- 6) **AUPE recommends** that both of Alberta's principal

pieces of labour legislation, the Code and PSERA, be amended to allow employees the right to strike, with provisions added that would fairly define limited essential services.

7) **AUPE recommends** that Section 114 of the Code, which allows employers to discontinue union dues collections if an illegal strike has taken place, be removed from the Code.

8) **AUPE recommends** that only direct government employees come under PSERA, and that all other employees come under the Code.

9) **AUPE recommends** that the transition that would result from implementation of Recommendation 8 be carried out in a manner consistent with the transitional provisions of the Regional Health Authorities Act.

10) **AUPE recommends** that for government employees who remain under PSERA, in the event that they are not given the right to strike, all matters should be subject to interest arbitration as is now the case under the Code.

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