

How will essential service legislation affect collective bargaining?

In December of 2007, the Saskatchewan Party introduced Bill Number 5, An Act Respecting Essential Public Services. The government will use Bill Number 5 to “assure the continuation of public services whose absence during a strike or lockout would constitute threats to health, safety, result in the destruction of property, environmental damage or disrupt court operations.” The Act’s definition of Public Services is extremely broad, taking in all provincial service departments; crown corporations; two universities; SIAST; all regional health authorities; and municipal police forces. With this broad definition of essential services, Bill Number 5 will affect at least forty collective agreements covering approximately sixty thousand full time employees. The number of employees that will be “essential” will seriously influence each of these unions’ ability to negotiate a fair and binding collective agreement for their members.

The new legislation immediately affects the collective bargaining process by requiring the employer and union to meet ninety days before the end of a contract to negotiate an essential services agreement. Historically, employer and union committees start the collective bargaining process well in advance of a contract’s end. Frequently, a new contract is signed before the current one ends if monetary issues are settled early in the process. The Act’s new requirement of an essential services agreement inserts a new burden for both sides. Instead of focusing on negotiating the contract, the two sides must now negotiate another agreement prior to getting to the critical task of drafting a new contract.

The negotiation of an essential services agreement will create increased conflict and tension because the agreement must determine which services the union will perform and which union members must do the work if there is a strike or lockout. The negotiation procedure will create expensive delays while trying to define the precise services and the specific employees performing the essential services. When the employer and union fail to create an essential services agreement, the employer will list the services and the specific employees who have to perform the services. These employees have now have lost their right to strike in support of the collective bargaining process. The union can appeal to the Saskatchewan Labour Relations Board. However, the Board can only confirm or revise the list of employees submitted by the employer and cannot change the list of essential services as mandated by the employer. If a union or “essential” person fails to perform their duties during a strike or lockout, the Act lays out very punishing fines for each day of the failure to perform their essential duties.

The employer’s list of essential services and employees required will often be excessive. The result of this is that neither side is compelled to settle the dispute because essential services are continuing. The union cannot bring pressure on the employer because it cannot withhold services. The employer is not receiving negative feedback because it is still providing the public with essential services. The union’s inability to exert pressure on the employer will extend the dispute, increase costs, affect public attitudes, reduce employee productivity, and hurt employee morale for decades. The collective bargaining process stagnates because the union’s tools to force the employer forward have been legislated into history.

Federal and provincial governments in Canada have forgotten recent history. The Treaty of Versailles founded the International Labour Organization (ILO) in 1919. Canada is a major participant in the ILO and was a founding member of this organization in 1919. In 1972, the federal government and all the provincial governments ratified the International Labour Organization's Convention Number 87. The federal Parliament even referred to this Convention in the Preamble of the Canada Labour Code. Convention Number 87 "establishes the right of all workers to form and join unions of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by public authorities, including the right to engage in free collective bargaining." In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. Our federal government stated, "Canada attaches great importance to the Declaration . . . as a key instrument for the promotion of the fundamental principles of freedom of association and collective bargaining. Its implementation will contribute significantly to improving the lives of working people and their families."

Canadian unions, including IBEW Local 2067, are increasingly using the International Labour Organization to file complaints against employers and governments that restrict the freedom of association principles and right to collective bargaining. The ILO's Complaints Committee fully supported the IBEW 2067 position in Case 1999 presented on our behalf by the Canadian Labour Congress against the Government of Canada (Saskatchewan). The rulings of the ILO Complaints section are now being acknowledged and forwarded by the Supreme Court of Canada. In 2007, the Supreme Court of Canada ruled against British Columbia's Bill 29. The Supreme Court justices declared collective bargaining a constitutional right for all Canadians. The justices were clear that Canada has a moral and legal obligation to live up to its international commitments as spelled out in the ILO Conventions and Declarations ratified by Canada.

The conflict remains. How does our government ensure the safety of essential services while meeting the moral and legal requirements as defined by the Supreme Court of Canada? Fair and balanced labour law must protect the rights of the workers while ensuring the right to safety of the public. These two rights cannot be held ransom in a labour dispute. Therefore, the government must develop a consultation process and restore the rights of both.

Katelyn New

How does the essential service legislation effect collective bargaining?

On May 14, 2008, the Saskatchewan Government passed Bill 5, The Public Services Essential Services Act. This essential services legislation has many effects on collective bargaining. Firstly, the ruling greatly affects the speed and quality of concessions that are made between a union and employer. Most often, essential services are declared in the public sector requiring compulsory arbitration in order for agreements to be made. In the best scenario, compulsory arbitration could speed up the bargaining process quite a bit, as an arbitrator would be able to solve disagreements more quickly than the two parties could by themselves. However, a more unfavourable outcome could be that the employers may not feel a great hurry to make decisions because employees are still required to work.

Essential services employees going to the bargaining table will have less rights and power, causing a decreased sense of satisfaction in their job. Ultimately, employee dissatisfaction will not be good for the employer either. Quality of services to customers will decrease, safety issues for employee and client could result, and other outcomes that may eventually be monetarily expensive and decrease morale for those within the organization. This decrease in power for the employees will also mean escalating tension between the two parties, especially while making concessions with each other after a contract has ended. The employees will feel a need to make higher expectations and demands for their next contract because of their limited power given by the essential service legislation.

Since the 1980's, the increasingly conservative governments have lead to a rise in government restrictions on public sector workers. These increased restrictions have caused rising pressure from unions towards the government resulting in growing willingness to order striking public sector employees to go back to work. Some governments impose their own preferred settlement, and therefore can effectively undermine the right to meaningful collective bargaining, being more successful at seeing their offers accepted.

Some services that are declared "essential" can be questioned as to whether they are in fact "essential" or not. Sometimes, this declaration on a particular service could be an object of political expediency. Employers definitely have the upper hand in this legislation, as it is most frequently used in the public sector, allowing the government to make decisions that could be biased in their own favour.

However, the wise union management team may choose to use this legislation to their favour whenever possible. If a certain service is declared essential, this would provide a strong bargaining tool for employees as they could debate that they are a very important part of the economy if they are important enough to be essential. If a service is declared essential, wages and benefits should reflect how much they are needed. Without these employees, the public will be without these important services. An employer should realize this factor and be willing to be more lenient in regards to accepting proposals from the bargaining party.

Essential Services Legislation is no longer negotiable and therefore Saskatchewan unions are faced with the results and effects of this law on their bargaining power and how best to represent the affected employee. Although there are many constraints, they can try their best to use this to their advantage creating a win-win situation. Government and unions will optimally work together reasonably for what is best for the public and employees but these restrictions will definitely make the process much more challenging!

Brianna Snider

How Essential Service Legislation Will Affect Collective Bargaining

By Brigitte Parent

In 2007, the introduction of the Public Services Essential Services Act in Saskatchewan seriously affected collective bargaining in the province. Through the legislation, the government intends to guarantee services necessary to life, health, and safety during a public sector strike or lockout. While all parties recognize that some trade-off between full collective bargaining rights and the best interests of the public community are reasonable, this legislation complicates, lengthens, erodes, and makes more expensive the collective bargaining process. It also infringes on Article 4 of the International Labour Organization (ILO) Conventions, to which Canada is a signatory member. This legislation does nothing to promote collective bargaining rights as advocated in Article 4. It utterly fails to “encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements” (ILO C98, Article 4, 1949). In general, essential service legislation has a seriously negative effect on collective bargaining.

First, essential service legislation complicates collective bargaining. Because the legislation presumes that each contract negotiation will involve a strike or lockout, it requires negotiation of what will be designated essential services prior to any contract negotiation, thus complicating an already complex bargaining process. Given that this designation must be completed, according to Don Cameron of the University of Regina, for about 40 separate collective agreements involving close to 60 000 full time workers in Saskatchewan, the increased complexity of the bargaining process becomes readily apparent. In other provinces, like British Columbia, public workers are sounding similar alarms. For example, the British Columbia Teachers' Federation (BCTF) alerted its members to the potential complexity of this designation process. “ The process involved in establishing essential service levels... involves research, meetings at both the local and provincial levels, hearings at the Labour Relations Board, careful monitoring during job action. This process can take anywhere from 45 to 60 days. During that time period, negotiations are often non-existent as the parties are totally absorbed in discussions over essential service designations.”

Essential service legislation also lengthens the collective bargaining process. Once essential services have been designated and are seen to continue, the parties have less incentive to settle contracts. In addition, the public pressure to settle through collective bargaining decreases as the community at large feels that all necessary duties are still continuing. An unintended fallout of this lengthening process is that all elective and general maintenance activities, regarded as non-essential services, will become backlogged.

Most union members believe that essential service legislation erodes collective bargaining. Therefore, the National Union of Public and General Employees and the Saskatchewan Government and General Employees' Union (SGEU) have filed a complaint with the ILO in Geneva. In this formal appeal, SGEU argues that essential services legislation "provides for a definition of essential services so broad that practically any public service employee could be designated an essential worker and therefore not eligible to exercise the right to strike." Not only will many workers lose the right to strike, but the accompanying Bill 6, an act amending the Trade Union Act, further limits workers' rights in Saskatchewan. Again, according to the SGEU in its complaint to the ILO, the Trade Union Act amendment compromises collective bargaining. "It reduces the ability of working people to join unions and to engage in collective bargaining." In provinces, such as Manitoba, that have enacted similar legislation, employers have tended to designate essential services and employees in excess of actual requirements. By increasing the number of essential workers, employers reduce the power of unions to negotiate from a position of strength at the bargaining table, thus eroding the collective bargaining process. In addition, often the settling of contracts, under essential service legislation, falls to third parties rather than to collective bargaining teams.

Essential service legislation also adds expense to the collective bargaining process. For example, the BCTF argues that, increasingly under this legislation, public dollars are spent on lawyers and arbitrators rather than on public services. "At rates of

\$150 to \$350 per hour, employer-hired lawyers will be paid handsomely for lengthy hearings to adjudicate which services are essential and what staffing levels are required. There is also the cost of employer-side staff time, and the time and resources of the Labour Relations Board.” Don Cameron argues that, in Saskatchewan, these expensive negotiations have proven unnecessary. In the past, workers and management have reached informal agreements to provide essential services as neither side wished to be seen by the public as endangering the public good. In addition, during a crisis, union members have halted job action in order to deal with the current emergency. For example, during the 1998 SaskPower lockout, a snowstorm hit the Regina area leaving thousands of residents without power. Despite the ongoing labour dispute with SaskPower, I.B.E.W. transmission and distribution brothers responded immediately to restore power to residents. More recently, SGEU snowplow operators returned to work in the middle of a work stoppage when forecasters predicted severe winter storms.

Essential service legislation, therefore, negatively affects collective bargaining. The government proclaims that such legislation will protect public health, safety, and property. It ignores, however, the fact that, in the past, neither the employer nor the employee side would willingly jeopardize any of these public interests for fear of public outcry and pressure. Instead the enactment of this legislation complicates and lengthens labour disputes and the collective bargaining process. Essential service legislation makes the process more expensive and much of that expense goes to the payment of lawyers and arbitrators who negotiate and designate essential services and staff rather than contract settlements. Essential service legislation erodes unions’ ability to negotiate, in a process, that hands the trump cards to the employer. As more services and employees are designated essential, fewer employees can participate in the collective bargaining process, further eroded by an increasing number of third party settlements. In summary, essential service legislation presents seriously limiting challenges to the collective bargaining process.