

1977 BILL 80

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 80

THE ALBERTA LABOUR AMENDMENT ACT, 1977

THE MINISTER OF LABOUR

First Reading

Second Reading

Third Reading

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THE ALBERTA LABOUR AMENDMENT ACT, 1977

(Assented to , 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 The Alberta Labour Act, 1973 is amended by this Act.

2 Section 11.2 is amended by striking out “competent or”.

3 Section 49(1) is amended by adding the following after clause (f):

(f.1) “Director of Conciliation and Mediation Services” means the person appointed pursuant to *The Public Service Act* as the Director of Conciliation and Mediation Services;

4 Section 56 is amended by striking out “and shall not be open to inspection by the public”.

5 Section 63 is amended by striking out “and shall not be open to inspection by the public”.

Explanatory Notes

1 This Bill will amend chapter 33 of the Statutes of Alberta, 1973.

2 Section 11.2 presently reads:

11.2 A member of the Board, the Director, secretary, a conciliation commissioner appointed pursuant to section 104, any person appointed pursuant to section 163 or 164 or any person designated by the Minister to endeavor to effect settlement of a dispute, is not a competent or compellable witness in proceedings before any court respecting any information, material or report obtained by him.

3 New definition.

4 Section 56 presently reads:

56 The information sent to the Board under section 55 shall be used only for the purposes of this Part and shall not be open to inspection by the public.

This amendment will permit members of the public to inspect the constitution and by-laws of trade unions if the inspection is necessary for a proceeding under the Part.

5 Section 63 presently reads:

63 The information sent to the Board pursuant to section 62 shall be used only for the purpose of this Part and shall not be open to inspection by the public.

The amendment will permit members of the public to inspect the constitution and by-laws of employers' organizations if the inspection is necessary for a proceeding under the Part.

6 *Section 93 is amended*

(a) *in subsection (1)(b) by striking out “or agree to transfer”;*

(b) *by repealing subsection (2) and substituting the following:*

(2) Where, after such inquiry as it considers necessary, the Board is satisfied that

(a) in the case of a merger or amalgamation, the successor organization would, if consent to the merger or amalgamation is granted,

(i) be, in the opinion of the Board, a proper employers' organization to be registered,

(ii) have, as one of its objects, the regulation of relations between employers and employees in a territory and trade jurisdiction in the construction industry, and

(iii) have as members a majority of the employers engaged in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has established the right of collective bargaining,

or

(b) in the case of a proposed transfer of rights under a registration certificate, the proposed transferee would, if consent to the transfer is granted,

(i) be, in the opinion of the Board, a proper employers' organization to be registered,

(ii) have, as one of its objects, the regulation of relations between employers and employees in a territory and trade jurisdiction in the construction industry, and

(iii) have as members a majority of the employers engaged in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has established the right of collective bargaining,

the Board may grant its consent and issue a new registration certificate or amend an existing registration certificate, as it considers necessary.

6 Section 93 presently reads:

93(1) No registered employers' organization shall

(a) merge or amalgamate with an employers' organization, or

(b) transfer or agree to transfer its rights under a registration certificate to any employers' organization, without the consent of the Board.

(2) Where, after such inquiry as it considers necessary, the Board considers that an employers' organization that would succeed to the rights under a registration certificate or resulting from a merger or amalgamation,

(a) is or will be a proper organization to be registered,

(b) has or will have as its collective bargaining objects the regulation of relations between employers and employees in a territory and trade jurisdiction in the construction industry, and

(c) has or will have as members, if consent of the Board is obtained, a majority of employers engaged in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has established the right of collective bargaining,

the Board may grant its consent and issue a new registration certificate, or amend an existing registration certificate as it considers necessary.

7 *The following is added after section 93:*

**Co-ordination of Collective Bargaining
in the Construction Industry**

93.01 (1) Upon the application of an organization, the Minister, if he is satisfied that the organization is an appropriate organization to co-ordinate collective bargaining in the construction industry,

(a) may, with or without conditions, designate the organization as a construction industry employee co-ordinating agency or a construction industry employer co-ordinating agency, as the case may be, and

(b) may specify that part or parts of the construction industry in respect of which the organization is designated as the co-ordinating agency.

(2) An organization designated under subsection (1) may participate in collective bargaining meetings between employers, employers' organizations and bargaining agents in that part or those parts of the construction industry in respect of which it is designated as the co-ordinating agency.

(3) An organization designated under subsection (1) has no authority to bind an employer, employers' organization or bargaining agent in the course of its activities as a co-ordinating agency under this section.

8 *Section 96(1) is repealed and the following is substituted:*

96(1) When an employers' organization that is not a registered employers' organization serves notice to commence collective bargaining, the notice must also contain or be accompanied by

(a) a list of the names and addresses of the employers on whose behalf the employers' organization is authorized to bargain collectively,

(b) a copy of each authorization given by the employers, and

(c) a list of the names and addresses of the persons designated as its bargaining committee.

(1.1) When an employers' organization that is not a registered employers' organization receives a notice to commence collective bargaining, it shall, within 10 days after the day on which it receives the notice, serve on the bargaining agent the lists and authorizations referred to in subsection (1).

(1.2) A copy of the lists and authorizations served under subsection (1) or (1.1) must be filed with the Director of Conciliation and Mediation Services.

7 Designation of co-ordinating agencies for the purpose of participating in collective bargaining meetings in the construction industry.

8 Section 96 presently reads:

96(1) Where an employers' organization that is not a registered employers' organization commences to bargain collectively with a bargaining agent it shall

(a) deliver to the bargaining agent and to the Board a list of the names and addresses of the employers on whose behalf it is authorized to bargain collectively,

(b) deliver to the bargaining agent and to the Board a copy of each authorization given by an employer, and

(c) deliver to the bargaining agent and to the Board a list of the names and addresses of the persons designated as its bargaining committee,

and upon receipt by the Board of the lists and authorizations, the employers' organization shall be deemed to be bargaining collectively for all the employers who gave their authorization.

(2) An authorization under this section may be given by a director or other senior official of the employer and thereupon that authorization shall be deemed to be the authorization of the employer.

(3) Where an employer has authorized an employers' organization that is not a registered employers' organization to bargain collectively on his behalf, the authorization may not be revoked until

(a) a collective agreement has been entered into between the employers' organization and the bargaining agent, or

(b) a strike or lockout commences in accordance with this Part, whichever first occurs.

(1.3) Upon service of the lists and authorizations in accordance with subsection (1) or (1.1), as the case may be, the employers' organization shall be deemed to be bargaining collectively for all the employers who are named in the list and who gave their authorization.

(1.4) An employer may be added to the list of employers on whose behalf the employers' organization is deemed to be bargaining collectively if

(a) the bargaining agent and the employers' organization agree to add the employer to the list,

(b) an authorization of the employer is served under subsection (1) or (1.1), as the case may be, and

(c) the agreement referred to in clause (a) is made and the service referred to in clause (b) is effected before a conciliation commissioner, if any, is appointed under section 104.

9 *The following section is added after section 96:*

96.1 (1) If a single registered employers' organization serves notice to commence collective bargaining on 2 or more trade unions named in registration certificates and

(a) the trade unions have

(i) a common trade jurisdiction, and

(ii) a territorial jurisdiction which, when combined, extends to all of Alberta,

and

(b) the notice states that the registered employers' organization named in the notice wants to bargain collectively with the trade unions named in the notice,

subsection (5) applies.

(2) If 2 or more registered employers' organizations serve notice to commence collective bargaining on 2 or more trade unions named in registration certificates and

(a) the trade unions have

(i) a common trade jurisdiction, and

(ii) a territorial jurisdiction which, when combined, extends to all of Alberta,

9 Province wide collective bargaining.

and

(b) each notice states that the registered employers' organizations named in the notice want to bargain collectively with the trade unions named in the notice,

subsection (5) applies.

(3) If 2 or more trade unions

(a) having

(i) a common trade jurisdiction, and

(ii) a territorial jurisdiction which, when combined, extends to all of Alberta,

and

(b) named in registration certificates

serve notice to commence collective bargaining on a single registered employers' organization stating that the trade unions named in the notice want to bargain collectively with the registered employers' organization, subsection (5) applies.

(4) If 2 or more trade unions

(a) having

(i) a common trade jurisdiction, and

(ii) a territorial jurisdiction which, when combined, extends to all of Alberta,

and

(b) named in registration certificates

serve notice to commence collective bargaining on 2 or more registered employers' organizations stating in each notice that the trade unions named in the notice want to bargain collectively with the registered employers' organizations named in the notice, subsection (5) applies.

(5) Notwithstanding anything in this Part, when notice to commence collective bargaining is served in the circumstances described in subsection (1), (2), (3) or (4),

(a) matters arising from the notice shall, where necessary, be dealt with as if it had been served or received by one registered employers' organization or one trade union, as the case may be, until

(i) a collective agreement is entered into, or

(ii) a trade union is entitled to make a settlement with an individual employer under section 127(3) or 128(3);

(b) a dispute arising between the one or more registered employers' organizations and the 2 or more trade unions shall, where necessary, be conducted and settled as if it were a dispute between one registered employers' organization and one trade union until

(i) a collective agreement is entered into, or

(ii) a trade union is entitled to make a settlement with an individual employer under section 127(3) or 128(3);

(c) the notice cannot be revoked or amended by agreement or otherwise by any of the parties named in the notice until

(i) a collective agreement is entered into, or

(ii) a trade union is entitled to make a settlement with an individual employer under section 127(3) or 128(3);

(d) the one or more registered employers' organizations or the trade unions served with the notice shall be deemed to be bargaining collectively with the one or more organizations or unions who served the notice.

(6) A copy of every notice served in the circumstances described in subsection (1), (2), (3) or (4) shall be filed with the Director of Conciliation and Mediation Services.

10 Section 102 is amended by striking out "Board" and substituting "Director of Conciliation and Mediation Services".

11 Section 138 is repealed and the following sections are substituted:

138 Every collective agreement must contain a method for the settlement of differences arising

(a) as to the interpretation, application or operation of a collective agreement,

10 Section 102 presently reads:

102 Each of the parties to a collective agreement shall upon its execution forthwith file one copy with the Board.

11 Collective agreement arbitration model clauses.

(b) with respect to a contravention or alleged contravention of a collective agreement, and

(c) as to whether a difference referred to in clause (a) or (b) can be the subject of arbitration

between the parties to or persons bound by the collective agreement.

138.1 If a difference arises between an employer or employers' organization and a bargaining agent during the period between

(a) the date of termination of a collective agreement between them, and

(b) either

(i) 14 days after the date the Minister

(A) refers a copy of the recommendations of a conciliation commissioner or conciliation board to the parties to a dispute pursuant to section 120, or

(B) notifies the parties to the dispute that he accepts the proposal of a conciliation commissioner that the parties decide whether to lock-out or strike pursuant to section 122,

or

(ii) the right of the bargaining agent to represent the employees is terminated,

whichever first occurs,

the provisions that were contained in the collective agreement pursuant to section 138 apply to the parties and the difference as if the collective agreement had remained in effect.

138.2 If a collective agreement does not contain the provisions required under section 138, the collective agreement shall be deemed to contain such of the following provisions in respect of which it is silent:

(a) If a difference arises as to the interpretation, application, operation or contravention or alleged contravention of this agreement or as to whether that difference can be the subject of arbitration, the parties agree to meet and endeavour to resolve the difference.

(b) If the parties are unable to resolve a difference referred to in clause (a), either party may notify the other in writing of its desire to submit the difference to arbitration.

(c) The notice referred to in clause (b) shall

(i) contain a statement of the difference, and

(ii) specify a name or a list of names of the person or persons it is willing to accept as the single arbitrator.

(d) Upon receipt of a notice referred to in clause (b), the party receiving the notice

(i) if it accepts the person or one of the persons suggested to act as arbitrator it shall, within 7 days, notify the other party accordingly and the difference shall be submitted to the arbitrator, or

(ii) if it does not accept any of the persons suggested by the party sending the notice it shall, within 7 days, notify the other party accordingly and send the name or a list of names of the person or persons it is willing to accept as the single arbitrator.

(e) If the parties are unable to agree on a person to act as the single arbitrator either party may request the Minister in writing to appoint a single arbitrator.

(f) The arbitrator may, during the arbitration, proceed in the absence of any party or person who, after notice, fails to attend or fails to obtain an adjournment.

(g) The arbitrator shall inquire into the difference and issue an award in writing and the award is final and binding upon the parties and upon every employee affected by it.

(h) The parties agree to share equally the expenses of the arbitrator.

(i) Except as permitted in clause (j), the arbitrator shall not alter, amend or change the terms or conditions of the collective agreement.

(j) If the arbitrator by his award determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject matter of the arbitration, the arbitrator may substitute such penalty for the discharge or discipline as to him seems just and reasonable in all the circumstances.

12 The following is added after section 155:

155.1 No employer, employers' organization or bargaining agent and no authorized representative acting on behalf of any of them, after having served or having been served with a notice to commence collective bargaining, shall refuse

(a) to meet and commence to bargain collectively in good faith, or

(b) to make every reasonable effort to enter into a collective agreement.

13 Section 158 is amended

(a) in subsection (5) by striking out "sections 153 to 156" and substituting "section 153, 154, 155 or 156".

(b) by adding the following after subsection (5):

(5.1) Where the Board is satisfied after an inquiry that an employer, employers' organization, bargaining agent or an authorized representative of any of them is failing or has failed to comply with section 155.1, the Board

(a) shall issue a directive directing the employer, employers' organization, bargaining agent or authorized representative concerned to bargain in good faith and make every reasonable effort to enter into a collective agreement, and

(b) may prescribe the procedure or conditions under which collective bargaining is to take place.

(c) in subsection (6) by adding "or (5.1)" after "pursuant to subsection (5)".

14 Sections 160 to 162 are repealed and the following substituted:

160(1) The Minister may make such regulations as he considers necessary for the purpose of effecting the final and binding settlement of differences arising in the construction industry following the assignment of work to members of a trade union or to workers of a particular trade, craft or class.

(2) Without restricting the power of the Minister under subsection (1), the Minister may, by regulation,

(a) establish or provide for the establishment of the Alberta Impartial Jurisdictional Disputes Board;

12 This section will permit a complaint to be made to the Board under section 156 if the section is not complied with.

13 The amendments permit the Board to issue such directives as it considers necessary to ensure that the parties start or continue bargaining in good faith. The amendment to subsection (6) permits a directive to be filed in the Supreme Court.

14 Alberta Impartial Jurisdictional Disputes Board.

(b) appoint, nominate or provide for the appointment or nomination of members to the Alberta Impartial Jurisdictional Disputes Board or provide a method by which the members are appointed;

(c) prescribe the terms of office of all or some of the members of the Alberta Impartial Jurisdictional Disputes Board either specifically or generally;

(d) prescribe or provide for the establishment of rules of procedure for the conduct of business coming before the Alberta Impartial Jurisdictional Disputes Board;

(e) govern the manner in which investigations and inquiries are to be conducted by the Alberta Impartial Jurisdictional Disputes Board.

(3) The Minister may enter into an agreement with one or more persons or organizations to establish and operate or provide for the establishment and operation of the Alberta Impartial Jurisdictional Disputes Board for the purpose of effecting the final and binding settlement of differences referred to in subsection (1).

(4) A person or organization may enter into an agreement to establish and operate the Alberta Impartial Jurisdictional Disputes Board for the purposes referred to in subsection (1), but the Board so established

(a) does not become effective for the purposes of sections 161 to 162.1 until the Minister approves the agreement, and

(b) only remains effective for the purposes of sections 161 to 162.1 while the Minister's approval under clause (a) is unrevoked.

161 If, after the establishment of the Alberta Impartial Jurisdictional Disputes Board, a difference arises in the construction industry following the assignment of work to members of a trade union or to workers of a particular trade, craft or class, a party to the difference who wishes it resolved shall refer the difference to the Alberta Impartial Jurisdictional Disputes Board for its decision.

162 A decision of the Alberta Impartial Jurisdictional Disputes Board may be filed by an employer, employers' organization or trade union affected by the decision with the clerk of the Court of the judicial district in which the difference arose and thereupon the decision is enforceable as a judgment or order of the Court.

162.1 Upon the application of a party to a difference that was the subject of a decision of the Alberta Impartial Jurisdictional Disputes Board, the Alberta Impartial Jurisdictional Disputes Board may, whether or not it has previously made a decision with respect to the matter,

(a) rehear a matter, or

(b) hear new evidence or opinion with respect to a matter previously heard by it,

and may revoke or amend a former decision or may substitute its decision with another.

15 Section 170 is repealed.

16(1) In this section "former section 138" means section 138 of The Alberta Labour Act, 1973 as it read immediately before the coming into force of this Act.

(2) If an arbitrator, arbitration board or other body was appointed under

(a) the former section 138, or

(b) a collective agreement

before the coming into force of this Act, the proceedings of the arbitrator, arbitration board or other body shall be continued to their conclusion and treated for all purposes as if this Act had not come into force and the former section 138 had remained in force.

17 This Act comes into force on the day upon which it is assented to.

15 Section 170 presently reads:

170(1) Any employer or employers' organization who refuses or fails to bargain collectively when required to do so under Part 4 is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for each day that the refusal or failure continues.

(2) Any trade union who refuses or fails to bargain collectively when required to do so under Part 4 is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for each day that the refusal or failure continues.

16 The section provides that arbitrations started under the former section 138 continue to their conclusion under that section.