

2016 Bill 4

Second Session, 29th Legislature, 65 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 4

**AN ACT TO IMPLEMENT A SUPREME COURT
RULING GOVERNING ESSENTIAL SERVICES**

THE MINISTER OF LABOUR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 4

BILL 4

2016

AN ACT TO IMPLEMENT A SUPREME COURT RULING GOVERNING ESSENTIAL SERVICES

(Assented to , 2016)

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

Part 1 Amendments to the Labour Relations Code

Amends RSA 2000 cL-1

1 The *Labour Relations Code* is amended by this Part.

2 Section 1 is amended

(a) by adding the following after clause (f):

(f.1) “Commissioner” means the Commissioner designated
under section 95.3;

(b) by adding the following after clause (h):

(h.1) “designated essential services worker” means a
designated essential services worker as defined in Part 2,
Division 15.1;

(c) by adding the following after clause (n):

(n.1) “essential services agreement” means an essential
services agreement under Part 2, Division 15.1;

Explanatory Notes

Part 1 Amendments to the Labour Relations Code

- 1** Amends chapter L-1 of the Revised Statutes of Alberta 2000.
- 2** Adds definitions.

3 Section 8 is amended by adding the following after subsection (4):

(4.1) The Commissioner, in consultation with the Chair, may designate the Chair or a vice-chair to act as Commissioner when the Commissioner is unable to act or is absent.

4 Section 9 is amended by adding the following after subsection (12):

(13) Notwithstanding subsections (6), (10) and (11), a Commissioner, when exercising the powers, duties or functions of the Commissioner under Part 2, Division 15.1, may sit alone to hear and decide a question and may grant any order or directive within the Board's jurisdiction, and is deemed to be the Board for the purposes of this Act when exercising those powers.

(14) Notwithstanding subsection (2), the Commissioner may, from time to time and in consultation with the Chair, delegate to the Chair or a vice-chair any powers, duties or functions of the Commissioner under this Act with respect to any matter specified by the Commissioner.

(15) Notwithstanding subsection (4), the Commissioner may, in consultation with the Chair, establish and chair a panel of members of the Board to carry out any power, duty or function of the Commissioner under this Act.

5 Section 65 is amended

(a) in subsection (2) by striking out "The Director" and substituting "Subject to subsection (2.1), the Director";

(b) by adding the following after subsection (2):

(2.1) If the parties to the dispute are parties to which Division 15.1 applies, the Director may appoint a mediator only if

- (a) the parties have an essential services agreement that has been accepted for filing in accordance with section 95.44,

3 Section 8 presently reads in part:

(4) The Chair may designate a vice-chair as acting Chair to act as Chair when the Chair is temporarily unable to act or is temporarily absent.

4 Section 9 presently reads in part:

(12) When the Chair or a vice-chair sits alone under subsection (10) or (11) or the Board meets as a panel, the Chair, vice-chair or panel, as the case may be, is deemed to be the Board for the purposes of this Act.

5 Section 65 presently reads in part:

(2) The Director

(a) may appoint a mediator if the Director receives a request under subsection (1)(a), and

(b) shall appoint a mediator if the Director receives a request under subsection (1)(b).

- (b) the parties have been granted an exemption under section 95.21,
- (c) the Commissioner has made a declaration under section 95.44(7), or
- (d) the Commissioner consents to a mediator being appointed.

6 Section 73 is amended by adding the following after clause (a):

- (a.1) in the case of an employee and bargaining agent referred to in section 95.2(a) or (b),
 - (i) an essential services agreement has been accepted for filing in accordance with section 95.44 or an exemption has been granted under section 95.21, and
 - (ii) a declaration has not been made under section 95.44(7),

7 Section 74 is amended by adding the following after clause (a):

- (a.1) in the case of an employer referred to in section 95.2(a) or (b),

6 Section 73 presently reads:

73 An employee, bargaining agent or person acting on behalf of a bargaining agent is entitled to strike or cause a strike if

- (a) no collective agreement is in force, other than as a result of section 130,*
- (b) a strike vote was held under this Division*
 - (i) that remains current,*
 - (ii) for which the results have been filed with the Board, and*
 - (iii) that resulted in a majority in favour of a strike,*
- (c) strike notice is given in accordance with this Division,*
- (d) the strike commences on the day and at the time and location specified in the strike notice or, if an amendment to the strike notice is agreed to and is permitted under this Division, on the day and at the time and location specified in the amended strike notice, and*
- (e) in a case where a disputes inquiry board is established before the commencement of the strike, the time limits referred to in section 105(3) have expired.*

7 Section 74 presently reads:

74 An employer or employers' organization is entitled to cause a lockout if

- (i) an essential services agreement has been accepted for filing in accordance with section 95.44 or an exemption has been granted under section 95.21, and
- (ii) a declaration has not been made under section 95.44(7),

8 The following is added after section 95:

**Division 15.1
Essential Services**

Essential services

95.1 For the purposes of this Division, essential services are those services

- (a) the interruption of which would endanger the life, personal safety or health of the public, or
- (b) that are necessary to the maintenance and administration of the rule of law or public security.

Interpretation

95.11(1) In this Division,

- (a) “designated essential services worker” means an employee described in subsection (2);

- (a) *no collective agreement is in force, other than as a result of section 130,*
- (b) *a lockout vote was held under this Division*
 - (i) *that remains current,*
 - (ii) *for which the results have been filed with the Board, and*
 - (iii) *that resulted in a majority in favour of a lockout,*
- (c) *lockout notice is given in accordance with this Division,*
- (d) *the lockout commences on the day and at the time and location specified in the lockout notice or, if an amendment to the lockout notice is agreed to and is permitted under this Division, on the day and at the time and location specified in the amended lockout notice, and*
- (e) *in a case where a disputes inquiry board is established before the commencement of the lockout, the time limits referred to in section 105(3) have expired.*

8 Adds Division 15.1 on Essential Services.

- (b) “employee” means an employee referred to in section 95.2;
- (c) “employer” means an employer referred to in section 95.2;
- (d) “essential services” means those services described in section 95.1;
- (e) “party” means either an employer or the bargaining agent for a bargaining unit of the employer’s employees.

(2) An employee who is required to work in accordance with an essential services agreement is a designated essential services worker during those times that the employee is required to perform essential services under the agreement.

Application of Division

95.2 This Division applies to the following:

- (a) employers who operate approved hospitals as defined in the *Hospitals Act*, all the employees of those employers and the bargaining agents for those employees;
- (b) employers that are regional health authorities, all of their employees to whom clause (a) does not apply and the bargaining agents for those employees;
- (c) employers to whom the *Public Service Employee Relations Act* applies, all the employees of those employers and the bargaining agents for those employees.

Exemption

95.21(1) At any time, whether or not the parties have an essential services agreement, either or both parties may apply to the Commissioner for an order exempting the employer and the bargaining agent for a bargaining unit from the application of sections 95.4 to 95.8.

(2) The Commissioner may grant the order if

- (a) the employees in the bargaining unit represented by the bargaining agent do not perform essential services, or

(b) the employees in the bargaining unit represented by the bargaining agent perform essential services and those services can be maintained during a strike or lockout by other capable and qualified persons who are not employees in the bargaining unit and who are not hired or supplied as described in section 95.41(3).

(3) The order expires when a collective agreement is entered into or on the termination of a strike or lockout.

(4) The Commissioner may, on application of either or both of the parties, rescind the order if the circumstances that led to the granting of the order have significantly changed.

(5) In making an order under subsection (4), the Commissioner may

- (a) direct the parties to begin negotiations for an essential services agreement under section 95.4,
- (b) if a strike or lockout has commenced, forthwith give directions to ensure that essential services are maintained during the strike or lockout, or
- (c) provide any other directions as are appropriate in the circumstances.

Commissioner

95.3(1) The Lieutenant Governor in Council shall designate the Chair or a vice-chair as Commissioner.

(2) The Commissioner may, for the purposes of this Division, decide whether

- (a) a person is an employee,
- (b) a person is an employer,
- (c) a person is a designated essential services worker,
- (d) an essential services agreement has been entered into, amended or terminated,
- (e) a person is bound by an essential services agreement,

- (f) a person is a party to an essential services agreement,
- (g) an essential services agreement is in effect, and
- (h) a service is an essential service,

and the Commissioner's decision is final and binding.

(3) Part 2, Division 1 applies to the Commissioner when exercising the Commissioner's powers, duties and functions under this Division unless this Act otherwise provides.

(4) When adjudicating any matter under this Division, the Commissioner may mediate the dispute between the parties.

Negotiating an essential services agreement

95.4(1) A party may, at any time by written notice to the other party, require the other party to begin negotiations for an essential services agreement.

(2) Forthwith after giving the notice to begin the negotiations, the party must provide the other party with its proposals regarding an essential services agreement.

(3) The parties shall negotiate in good faith and make every reasonable effort to enter into an essential services agreement.

(4) A party may make a complaint in writing to the Commissioner that the other party has failed to comply with subsection (2) or (3), and the Commissioner shall inquire into the complaint.

(5) When the Commissioner is satisfied after an inquiry that a party has failed to comply with subsection (2) or (3), the Commissioner may do either or both of the following:

- (a) issue a directive directing the party to comply with subsection (2) or (3), as the case may be;
- (b) prescribe the conditions under which the negotiation of an essential services agreement is to take place.

Contents of an essential services agreement

95.41(1) An essential services agreement must include at least the following:

- (a) provisions that identify the essential services that are to be maintained by employees in the bargaining unit in the event of a strike or lockout;
- (b) provisions that set out the classifications of employees, and the number of positions in each classification, required to perform the essential services referred to in clause (a);
- (c) provisions that set out a method by which the employees capable of performing and qualified to perform essential services will be assigned to perform those services during a strike or lockout;
- (d) provisions that set out the procedures to be followed in responding to emergencies and foreseeable changes to the essential services that need to be maintained during a strike or lockout;
- (e) provisions describing changes or permitted changes, if any, to the terms and conditions of employment that are to apply to designated essential services workers under sections 130(2) and 147(4) of this Act and sections 24.1(2) and 46(2.1) of the *Public Service Employee Relations Act*;
- (f) provisions that identify sufficient umpires, but at least one umpire, to be available to provide timely resolution of disputes under section 95.7;
- (g) any other provisions specified in the regulations.

(2) For the purposes of this section, the requirement for designated essential services workers is to be determined having regard, subject to subsection (3), to the availability of other capable and qualified persons who are not members of the bargaining unit.

(3) During a strike or lockout, the employer shall not use the services of a person, whether paid or not,

- (a) who is hired by the employer for the purpose of, or
- (b) who is supplied to the employer by another person for the purpose of,

performing the work of an employee in the bargaining unit that is on strike or lockout.

(4) The Lieutenant Governor in Council may make regulations specifying other provisions for the purpose of subsection (1)(g).

Determination of an essential services agreement

95.42(1) Where the parties agree to use an umpire to mediate and, if necessary, to settle an essential services agreement, the parties may apply to the Commissioner to appoint an umpire if they cannot agree on an umpire.

(2) Where the parties do not agree to the use of an umpire, either or both parties may apply to the Commissioner for assistance in settling the essential services agreement.

(3) On receipt of an application under subsection (2), the Commissioner may

- (a) appoint an umpire to settle the provisions of the essential services agreement,
- (b) settle the provisions of the agreement, or
- (c) provide any other directions as are appropriate in the circumstances.

(4) If an umpire is appointed, each party must promptly give the umpire a statement setting out the matters on which the parties have agreed, if any, and the matters on which they are unable to agree.

(5) An umpire appointed under this section to settle the provisions of the essential services agreement may mediate the dispute between the parties.

(6) If the umpire or the Commissioner settles the provisions of the essential services agreement, the parties shall submit the agreement for filing in accordance with section 95.44.

(7) Either party may apply to the Commissioner for a review of an umpire's award settling the provisions of an essential services agreement within 10 days of the umpire making the award, on grounds that it is unreasonable.

(8) The parties must share equally the remuneration and expenses of the umpire, unless otherwise agreed to by the parties.

Amendment of agreement

95.43(1) The parties to an essential services agreement may at any time amend the agreement in writing.

(2) Section 95.42 applies if the parties are unable to agree on an amendment to the essential services agreement.

(3) An amendment to an essential services agreement is not effective until it is accepted for filing in accordance with section 95.44.

Filing of essential services agreement

95.44(1) In this section, “essential services agreement” includes an amendment to an essential services agreement.

(2) The parties must submit an essential services agreement for filing for each round of collective bargaining unless an exemption has been granted under section 95.21.

(3) When an essential services agreement is submitted for filing, each party must declare to the Commissioner

- (a) whether the agreement ensures that essential services are maintained during any strike or lockout, and
- (b) whether the provision of essential services required by the essential services agreement during a strike or lockout will not substantially interfere with meaningful collective bargaining.

(4) The Commissioner may accept an essential services agreement for filing if in the opinion of the Commissioner

- (a) the agreement complies with section 95.41,
- (b) the agreement ensures the provision of essential services during a strike or lockout, and
- (c) the provision of essential services required by the essential services agreement during a strike or lockout

will not substantially interfere with meaningful collective bargaining.

(5) If the Commissioner believes that a hearing is necessary to determine whether an essential services agreement should be accepted for filing, the Commissioner shall advise the parties and hold a hearing.

(6) If the Commissioner refuses to accept an essential services agreement for filing, the Commissioner may endeavour to make the agreement acceptable for filing by

- (a) directing the parties to negotiate amendments to the essential services agreement,
- (b) assisting the parties in amending the agreement,
- (c) amending the agreement,
- (d) appointing an umpire to amend the agreement, and
- (e) providing any other directions as are appropriate in the circumstances.

(7) If the Commissioner determines that an essential services agreement acceptable for filing cannot be achieved under subsection (6), and the Commissioner is satisfied that the provision of essential services during a strike or lockout will substantially interfere with meaningful collective bargaining, the Commissioner may declare that the dispute is to be resolved by compulsory arbitration if the parties cannot reach a collective agreement.

(8) Where a declaration is made under subsection (7) the parties shall

- (a) continue to bargain collectively, and
- (b) if the parties are unable to conclude a collective agreement after mediation is completed under section 65 of this Act or section 65 as it applies to the *Public Service Employee Relations Act*, as the case may be, the parties may, as applicable,

- (i) request the Minister to establish a compulsory arbitration board under section 98.1, or
- (ii) request the Board under section 31(1) of the *Public Service Employee Relations Act* to establish a compulsory arbitration board.

Significant change in circumstances

95.45(1) On application by either or both parties during a strike or lockout, if the Commissioner is satisfied that, as a result of an emergency or an unforeseeable change in circumstances,

- (a) there has been a significant change to the essential services that must be maintained during the strike or lockout, and
- (b) the change referred to in clause (a) will substantially interfere with meaningful collective bargaining,

the Commissioner may declare that the dispute is to be resolved by compulsory arbitration.

(2) If the Commissioner makes a declaration under subsection (1), the parties may, as applicable,

- (a) request the Minister to establish a compulsory arbitration board under section 98.1, or
- (b) request the Board under section 31(1) of the *Public Service Employee Relations Act* to establish a compulsory arbitration board.

(3) If the Commissioner makes a declaration under subsection (1), any strike or lockout becomes illegal and an offence under this Act, and

- (a) no employer who is a party to the dispute shall lock out,
- (b) no employees who are parties to the dispute shall strike,
- (c) any strike or lockout that is in effect is terminated, and

- (d) the relationship of employer and employee continues uninterrupted by the dispute or anything arising from the dispute.

(4) If the Commissioner makes a declaration under subsection (1), notwithstanding anything in this Act or the *Public Service Employee Relations Act*, neither party to the dispute shall alter any of the terms and conditions of employment that existed immediately prior to the dispute, except that the employer, with the consent of the bargaining agent, may give effect to a proposed change in wages or hours of work.

Agreement binding

95.5 An essential services agreement accepted for filing in accordance with section 95.44 is binding on

- (a) the employer,
- (b) the bargaining agent, and
- (c) every employee of the employer who is in the bargaining unit represented by the bargaining agent.

Term of an essential services agreement

95.6 Where the parties have negotiated a continuing essential services agreement, notwithstanding that the agreement has previously been accepted for filing, the agreement must be submitted for filing in accordance with section 95.44 for each ensuing round of collective bargaining.

Essential services agreement dispute

95.7(1) Either party to an essential services agreement may notify the other in a manner provided for in the essential services agreement that it

- (a) disputes the manner in which the other party is interpreting, applying or implementing the agreement, or
- (b) alleges that the other party has contravened the agreement.

(2) Where the parties are unable to resolve a dispute referred to in subsection (1), either party may apply in a manner provided

for in the essential services agreement for an umpire identified in the essential services agreement to resolve the dispute.

(3) After receiving an application referred to in subsection (2), the umpire may

- (a) make or issue any interim award the umpire considers necessary pending the final determination of the dispute,
- (b) settle the dispute as soon as is reasonably possible, and
- (c) provide any other directions as are appropriate in the circumstances.

(4) If no umpire identified by the parties in the essential services agreement is available to provide timely resolution of the dispute, either or both parties may apply to the Commissioner to appoint an umpire to resolve the dispute.

(5) An umpire has the powers of an arbitrator under section 143 and, subject to the terms of the essential services agreement, may mediate the dispute.

(6) The award of an umpire is binding on

- (a) the employer,
- (b) the bargaining agent, and
- (c) every employee of the employer who is in the bargaining unit represented by the bargaining agent.

(7) The parties must share equally the remuneration and expenses of the umpire unless the essential services agreement otherwise provides.

(8) Either party may apply to the Commissioner for a review of an umpire's award within 10 days of the umpire making the award, on grounds that it is unreasonable.

(9) An umpire shall file a copy of an award with the Commissioner, and if the employer or bargaining agent fails to comply with the award, the Commissioner may file a copy of the award with the clerk of the Court and on being filed the award is enforceable as a judgment or order of the Court.

Prohibitions when essential services agreement in effect

95.8(1) While an essential services agreement is in effect,

- (a) no employer and no person acting on an employer's behalf shall lock out or cause a lockout or threaten to lock out or to cause a lockout of any designated essential services worker,
- (b) no bargaining agent and no person acting on behalf of a bargaining agent shall strike or cause a strike or threaten to strike or to cause a strike of any designated essential services worker, and
- (c) no designated essential services worker shall participate in a strike against the employer.

(2) No person or trade union shall in any manner impede or prevent or attempt to impede or prevent a designated essential services worker from complying with this Division.

Application of transitional provisions

95.9 Sections 95.91 and 95.92 apply only to employers, employees and bargaining agents referred to in section 95.2.

Transitional — parties in mediation

95.91(1) If before the day on which the Bill to enact *An Act to Implement a Supreme Court Ruling Governing Essential Services* receives first reading,

- (a) a mediator has been appointed under section 65 or 97 of this Act or under section 28 or 32(1)(b) of the *Public Service Employee Relations Act*,
- (b) the dispute has not been resolved, and
- (c) a notification to appoint a compulsory arbitration board has not been issued by, as the case may be,
 - (i) the Minister under section 117(1), or
 - (ii) the Board under section 33 of the *Public Service Employee Relations Act*,

the parties must, subject to receiving an exemption under section 95.21, enter into an essential services agreement within

120 days after the Bill to enact *An Act to Implement a Supreme Court Ruling Governing Essential Services* receives Royal Assent or any longer period agreed on by the parties.

(2) Section 95.42 applies if the parties are unable at any time to agree on an essential services agreement.

(3) If, on or after the day on which the Bill to enact *An Act to Implement a Supreme Court Ruling Governing Essential Services* receives first reading but before it receives Royal Assent,

- (a) the Minister notifies the parties to a dispute under section 117(1) to appoint a compulsory arbitration board pursuant to section 98, or
- (b) the Board notifies the parties to a dispute under section 33 of the *Public Service Employee Relations Act* to appoint persons to act as members of a compulsory arbitration board,

a compulsory arbitration board subsequently appointed pursuant to that notification is terminated and any award made by the compulsory arbitration board is void.

Transitional — compulsory arbitration board established

95.92(1) If before the day on which the Bill to enact *An Act to Implement a Supreme Court Ruling Governing Essential Services* receives first reading,

- (a) the Minister notifies the parties to a dispute under section 117(1) to appoint a compulsory arbitration board pursuant to section 98, or
- (b) the Board notifies the parties to a dispute under section 33 of the *Public Service Employee Relations Act* to appoint persons to act as members of a compulsory arbitration board,

the compulsory arbitration board appointed pursuant to that notification continues as the dispute resolution process unless the parties agree to terminate the compulsory arbitration board.

(2) The parties may agree to terminate the compulsory arbitration board if it has not made an award by filing with the

Board a copy of their agreement that the compulsory arbitration board is to be terminated.

(3) If a compulsory arbitration board is terminated under this section, the parties must, subject to receiving an exemption under section 95.21, enter into an essential services agreement within 120 days of the termination of the compulsory arbitration board or any longer period agreed on by the parties.

(4) Section 95.42 applies if the parties are unable at any time to agree on an essential services agreement.

9 Section 96 is repealed and the following is substituted:

Application of Division

96(1) Subject to subsections (2), (3) and (4), this Division applies, notwithstanding any other provision of this Act, to

- (a) firefighters and, to the extent that they bargain collectively with firefighters, municipalities and Metis settlements,
- (b) employers who are ambulance operators as defined in the *Emergency Health Services Act* and their employees who act as ambulance attendants as defined in that Act to whom neither clause (c) nor (d) applies,
- (c) employers who operate approved hospitals as defined in the *Hospitals Act* and all the employees of those employers, and
- (d) employers that are regional health authorities and all of their employees not referred to in clause (c).

(2) No employees or employers referred to in subsection (1)(a) or (b) shall strike, lock out, cause a strike or lockout or threaten to cause a strike or lockout.

(3) Section 98.1 applies only to employees and employers referred to in subsection (1)(c) and (d).

(4) Sections 97, 98 and 99 apply only to employees and employers referred to in subsection (1)(a) and (b).

9 Section 96 presently reads:

96(1) This Division applies to the following:

- (a) firefighters and, to the extent that they bargain collectively with firefighters, municipalities and Metis settlements;*
 - (b) employers who operate approved hospitals as defined in the Hospitals Act, and all the employees of those employers;*
 - (c) employers that are regional health authorities and all of their employees to whom clause (b) does not apply;*
 - (d) ambulance operators as defined in the Emergency Health Services Act and their employees who act as ambulance attendants as defined in that Act to whom neither clause (b) nor clause (c) applies.*
- (2) No employees, trade union, employer or employers' organization to which this Division applies shall strike, lock out, cause a strike or lockout or threaten to cause a strike or lockout.*
- (3) This Division applies notwithstanding any other provision of this Act.*

10 Section 97(1) is amended by striking out “an employment to which this Division applies” **and substituting** “an employment referred to in section 96(1)(a) or (b)”.

11 Section 99 is repealed and the following is substituted:

**Establishment of compulsory arbitration board —
essential services employees**

98.1 Where the parties have made a request under section 95.44(8)(b) or 95.45(2)(a) to the Minister to establish a compulsory arbitration board, the Minister shall direct the parties to appoint a 3-member or one-member compulsory arbitration board in accordance with Division 20 and shall direct the parties to provide a list of the matters remaining in dispute to the compulsory arbitration board.

Terms of reference

99 When 3 persons are appointed to act as members of a 3-member compulsory arbitration board or one person is

10 Section 97 presently reads:

97(1) If a dispute affecting an employment to which this Division applies cannot be resolved, either or both parties to the dispute or the Minister may make a request for the appointment of a 3-member compulsory arbitration board, or the parties may jointly make a request for the appointment of a one-member compulsory arbitration board, to

- (a) the mediator, if one has been appointed with respect to the dispute, or*
- (b) the Director, if no mediator has been appointed with respect to the dispute.*

(2) When the Director receives a request under subsection (1)(b), the Director shall appoint a mediator and forward the request for the establishment of a compulsory arbitration board to the mediator.

(3) The mediator shall endeavour to effect a settlement and shall, not later than 14 days after the mediator receives a request under subsection (1) or (2),

- (a) list the items in dispute and the items that have been settled by the parties, and*
- (b) forward the list and the request for the appointment of a compulsory arbitration board to the Minister.*

11 Section 99 presently reads:

99 When 3 persons are appointed to act as members of a 3-member compulsory arbitration board or one person is appointed to act as the member of a one-member compulsory arbitration board, the Minister, by notice in writing to the chair or member, as the case may be, shall forward a list of the items in dispute to be resolved by the compulsory arbitration board.

appointed to act as the member of a one-member compulsory arbitration board, the Minister, by notice in writing to the chair or member, as the case may be, shall forward the list referred to in section 97(3) to be resolved by the compulsory arbitration board.

12 Section 100(1) is amended by adding “98.1 or” after “section”.

13 Section 114(1) is amended by striking out “Division 16” and substituting “Division 15.1, 16”.

14 Section 115(1) is amended by striking out “Division 16” and substituting “Division 15.1, 16”.

15 Section 117(1) is amended by adding “or 98.1” after “section 98”.

12 Section 100(1) presently reads:

100(1) On receipt of the list under section 99, if the compulsory arbitration board is unable to effect a settlement, it shall consider the position of the parties on each item in dispute and determine what method or combination of methods of arbitration shall be implemented to resolve any or all of the items in dispute.

13 Section 114(1) presently reads:

114(1) If a strike that is prohibited by Division 16 or 18 of this Part commences, the Board may direct the employer to suspend the deduction and remittance of union dues, assessments or other fees payable to the bargaining agent by the employees in the bargaining unit that is on strike.

14 Section 115(1) presently reads:

115(1) If a lockout that is prohibited by Division 16 or 18 of this Part commences, the Board may direct the employer who locks out the employer's employees to pay the union dues, assessments and other fees payable by the employees to any bargaining agent that represents them.

15 Section 117(1) presently reads:

117(1) If the Minister directs the parties to a dispute to appoint a voluntary arbitration board under section 94 or a compulsory arbitration board under section 98, the Minister shall notify the parties to the dispute in writing accordingly and require them either

(a) to each appoint a person to act as a member of a 3-member arbitration board, or

16 Section 130 is amended by renumbering it as section 130(1) and by adding the following after subsection (1):

(2) If a strike or lockout commences under Division 13, a collective agreement is deemed to continue to apply under subsection (1) during that strike or lockout in respect of any designated essential services workers, subject to any changes or permitted changes described in the essential services agreement.

17 Section 147 is amended by adding the following after subsection (3):

(4) If a strike or lockout is subject to an essential services agreement, the prohibitions in subsections (2) and (3) remain in effect during that strike or lockout in respect of any designated essential services workers, subject to any changes or permitted changes described in the essential services agreement.

- (b) *to jointly appoint a person to act as a one-member arbitration board*

within 10 days after that notification.

16 Section 130 presently reads:

130 When notice to commence collective bargaining has been served under this Act, a collective agreement that applies to the parties at the time of service of the notice is deemed to continue to apply to the parties, notwithstanding any termination date in the agreement, until

- (a) *a new collective agreement is concluded,*
- (b) *the right of the bargaining agent to represent the employees is terminated, or*
- (c) *a strike or lockout commences under Division 13.*

17 Section 147 presently reads:

147(1) If a trade union has applied for certification, no employer affected by the application shall, except in accordance with an established custom or practice of the employer or with the consent of the trade union or in accordance with a collective agreement in effect with respect to the employees in the unit affected by the application, alter the rates of pay, any term or condition of employment or any right or privilege of any of those employees during the time between the date of the application and

- (a) *the date of its refusal, or*
- (b) *30 days after the date of certification.*

(2) If a notice to commence collective bargaining has been served pursuant to section 59(1) within 30 days after the date of certification of the bargaining agent, no employer affected by the notice shall, except

- (a) *in accordance with an established custom or practice of the employer,*

Part 2
Amendments to the Public Service
Employee Relations Act

Amends RSA 2000 cP-43

18 The *Public Service Employee Relations Act* is amended by this Part.

19 Section 1 is amended

(a) by adding the following after clause (i):

(i.1) “designated essential services worker” means a designated essential services worker under Part 2, Division 15.1 of the *Labour Relations Code*;

(b) by adding the following after clause (m):

(b) *with the consent of the bargaining agent, or*

(c) *in accordance with a collective agreement in effect with respect to the bargaining agent,*

alter the rates of pay, a term or condition of employment or a right or privilege of any employee represented by the bargaining agent or of the bargaining agent itself until 60 days after the date on which the notice is served.

(3) *If a notice to commence collective bargaining has been served pursuant to section 59(2), no employer affected by the notice shall, except*

(a) *in accordance with an established custom or practice of the employer,*

(b) *with the consent of the bargaining agent, or*

(c) *in accordance with a collective agreement in effect with respect to the bargaining agent,*

alter the rates of pay, a term or condition of employment or a right or privilege of any employee represented by the bargaining agent or of the bargaining agent itself until the right of the bargaining agent to represent the employees is terminated or a strike or lockout commences under Division 13.

Part 2
Amendments to the Public Service
Employee Relations Act

18 Amends chapter P-43 of the Revised Statutes of Alberta 2000.

19 Adds definitions.

- (m.1) “essential services agreement” means an essential services agreement under Part 2, Division 15.1 of the *Labour Relations Code*;

20 Section 3(2) is amended by adding the following after clause (p):

- (q) a strike has occurred or is lawful under this Act;
(r) a lockout has occurred or is lawful under this Act,

21 Section 24(2) and (3) are repealed.

22 The following is added after section 24:

Bridging

24.1(1) When notice to commence collective bargaining has been served under this Act, a collective agreement that applies to the parties at the time of service of the notice is deemed to continue to apply to the parties, notwithstanding any termination date in the collective agreement, until

20 Section 3(2) presently reads in part:

(2) In addition to its powers under the Labour Relations Code, the Board may decide for the purposes of this Act whether

(p) a person is included in or excluded from a unit,

and the Board's decision is final and binding.

21 Section 24 presently reads in part:

(2) When notice to commence collective bargaining has been served under this Act, a collective agreement that applies to the parties at the time of service of the notice is deemed to continue to apply to the parties, notwithstanding any termination date in the agreement, until

(a) a new collective agreement is concluded,

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

(c) a collective agreement becomes a collective agreement between the parties pursuant to section 43(2).

(3) When a collective agreement is continued under subsection (2), its continued operation is not a bar to an application for certification as bargaining agent or to an application for the revocation of the certification of the bargaining agent or for a declaration that a bargaining agent is no longer entitled to bargain collectively.

22 Bridging.

- (a) a new collective agreement is concluded,
- (b) the right of the bargaining agent to represent the employees is terminated,
- (c) a collective agreement becomes a collective agreement between the parties pursuant to section 43(2), or
- (d) a strike or lockout commences under Part 2, Division 13 of the *Labour Relations Code* as it applies to this Act.

(2) If a strike or lockout commences under Part 2, Division 13 of the *Labour Relations Code* as it applies to this Act, a collective agreement is deemed to continue to apply under subsection (1) during that strike or lockout in respect of any designated essential services workers, subject to any changes or permitted changes described in the essential services agreement.

(3) No application for certification as bargaining agent and no application for revocation of bargaining rights may be made without the Board's consent during a strike or lockout under Part 2, Division 13 of the *Labour Relations Code* as it applies to this Act.

23 Part 6, Division 1 is repealed and the following is substituted:

Division 1 Application of the Labour Relations Code

Application of Labour Relations Code

28(1) Part 2, Divisions 11 to 15 of the *Labour Relations Code* apply to this Act and have effect as if those provisions formed part of this Act, except as follows:

- (a) in Division 11, in section 65, the reference to section 59 shall be read as a reference to section 20 of this Act;
- (b) in Division 12,
 - (i) in section 69(1), "At any time after the exchange of proposals under section 60" shall be read as "At any

23 Replaces Part 6, Division 1, Application of the Labour Relations Code.

time after a notice in writing to commence collective bargaining is served under section 20 of the *Public Service Employee Relations Act*”;

(ii) section 70(4) does not apply;

(c) in Division 13,

(i) section 73(a.1) shall be read as follows:

(a.1) in the case of an employee and bargaining agent referred to in section 95.2(c),

(i) an essential services agreement has been accepted for filing in accordance with section 95.44, or an exemption has been granted under section 95.21, and

(ii) a declaration has not been made under section 95.44(7),

(ii) section 74(a.1) shall be read as follows:

(a.1) in the case of an employer referred to in section 95.2(c),

(i) an essential services agreement has been accepted for filing in accordance with section 95.44 or an exemption has been granted under section 95.21, and

(ii) a declaration has not been made under section 95.44(7),

(iii) sections 81 to 83 do not apply;

(iv) in sections 73(a), 74(a) and 75(2) the reference to section 130 of the *Labour Relations Code* shall be read as a reference to section 24.1 of this Act.

(2) Section 154 of the *Labour Relations Code* applies to this Act.

(3) Part 2, Divisions 17 and 18 of the *Labour Relations Code* apply to this Act and have effect as if those provisions formed

part of this Act, except that in Division 17, section 107(5) does not apply.

(4) Part 2, Division 20 of the *Labour Relations Code* applies to this Act and has effect as if those provisions formed part of this Act, but does not apply with respect to a compulsory arbitration board under this Act.

24 Section 31(1) is repealed and the following is substituted:

Request for compulsory arbitration board

31(1) If a dispute cannot be resolved and a declaration has been made under section 95.44(7) or 95.45(1) of the *Labour Relations Code*, the employer or the bargaining agent, or both, may request the Board to establish a compulsory arbitration board.

25 Section 32 is repealed and the following is substituted:

Establishment of compulsory arbitration board

32 When a request for the establishment of a compulsory arbitration board is made by either an employer or a bargaining agent, the Board may establish a compulsory arbitration board if it is satisfied that

- (a) there are arbitral items to refer to a compulsory arbitration board,
- (b) the arbitral items can satisfactorily be considered together,
- (c) it is an appropriate time to refer the matter to a compulsory arbitration board, and
- (d) the dispute is a proper one to refer to a compulsory arbitration board.

24 Section 31(1) presently reads:

31(1) If a dispute cannot be resolved, the employer or the bargaining agent, or both, may refer it to the Board and request that a compulsory arbitration board be established.

25 Section 32 presently reads:

32(1) When a request for the establishment of a compulsory arbitration board is made by either an employer or a bargaining agent, the Board

- (a) if it is satisfied that the parties to the dispute have failed to make reasonable efforts to conclude a collective agreement, may direct the parties to continue collective bargaining,*
- (b) if the party making the request agrees to withdraw it and both parties agree to the appointment of a mediator, may make that appointment, or*
- (c) if it is satisfied that*
 - (i) there are arbitral items to refer to a compulsory arbitration board,*
 - (ii) the arbitral items can satisfactorily be considered together,*
 - (iii) it is an appropriate time to refer the matter to a compulsory arbitration board, and*

26 Section 37(2) is amended by striking out “32(1)(c)” and substituting “32”.

27 Section 45(3) is amended

(a) in clause (a) by striking out “or” at the end of subclause (iv) and adding the following after subclause (v):

(vi) has participated in any strike that is permitted by this Act, or

(vii) has exercised any right under this Act;

(b) by adding the following after clause (e):

(e.1) suspend, discharge or impose a financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of the employee’s refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike that is permitted under this Act;

(iv) *the dispute is a proper one to refer to a compulsory arbitration board,*

may establish a compulsory arbitration board in accordance with this Part.

(2) When a request for the establishment of a compulsory arbitration board is made by an employer and a bargaining agent jointly, the Board may, if it is satisfied with respect to the matters referred to in subsection (1)(c), establish a compulsory arbitration board in accordance with this Part.

26 Section 37(2) presently reads:

(2) If the Board is satisfied with respect to the matters referred to in section 32(1)(c), the Board shall refer the arbitral items in a dispute to the compulsory arbitration board for resolution.

27 Section 45(3)(a) and (e) presently read:

(3) No employer and no person acting on behalf of an employer shall

(a) refuse to employ or terminate the employment of any person or discriminate against any person in regard to employment or any term or condition of employment because the person

(i) is a member of a trade union or is an applicant for membership in a trade union,

(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the union as a condition of acquiring or retaining membership in the trade union,

(iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

*(iv) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Act,
or*

28 Section 46 is amended

(a) in subsection (2) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):

(d) a strike or lockout commences under Part 2, Division 13 of the *Labour Relations Code* as it applies to this Act,

(b) by adding the following after subsection (2):

(2.1) If a strike or lockout is subject to an essential services agreement, the prohibition in subsection (2) remains in effect during that strike or lockout in respect of any designated essential services workers, subject to any changes or permitted changes described in the essential services agreement.

29 The following is added after section 46:

Insurance and pension rights

46.1(1) No employer and no person acting on behalf of an employer shall deny to any employee any pension rights or

- (v) *has made an application or filed a complaint under this Act;*
- (e) *suspend, discharge or impose a financial or other penalty on a person employed by the employer or take any other disciplinary action against that person by reason of that person having refused to perform an act prohibited by this Act;*

28 Section 46 presently reads in part:

(2) When a notice to commence collective bargaining is given, the employer affected by the notice shall not alter any term or condition of employment of an employee in the unit on whose behalf the bargaining agent has given notice until

- (a) a collective agreement is in effect between the parties,*
- (b) the award or the final award of an arbitration board is issued, or*
- (c) the right of the trade union to represent employees is terminated,*

whichever occurs first, unless the alteration is permitted by a collective agreement, if one is in effect respecting the employees represented by the bargaining agent, or the bargaining agent agrees to the alteration.

(3) Nothing in this section detracts from or interferes with the right of an employer to discipline, suspend, lay off, demote, dismiss or terminate the employment of employees

- (a) in accordance with a collective agreement, or*
- (b) for cause, if there are no provisions in a collective agreement relating to those rights.*

29 Insurance and pension rights.

benefits or insurance rights or benefits to which the employee would be entitled but for

- (a) the cessation of work by the employee as the result of a lockout or strike that is permitted by this Act, or
- (b) the dismissal of the employee contrary to this Act.

(2) While an insurance scheme remains in force, no employer or person acting on behalf of an employer shall, without lawful excuse,

- (a) deny or threaten to deny to an employee any benefit under the insurance scheme,
- (b) cancel or threaten to cancel the insurance scheme,
- (c) refuse to accept any of the premiums tendered by a bargaining agent on behalf of all the employees enrolled in the insurance scheme who are represented by the bargaining agent, or
- (d) fail to remit to the insurer any of the premiums tendered by a bargaining agent,

in the circumstances referred to in subsection (3).

(3) Subsection (2) applies where

- (a) the employee in a unit of employees of the employer ceases to work because the employees in the unit are locked out by the employer or because the employees in the unit are on a lawful strike, and
- (b) the trade union that was the bargaining agent for the employees in the unit at the time the lockout or strike commenced tenders, or attempts to tender, to the employer, for the duration of the lockout or strike, the premiums in respect of all the employees covered by the insurance scheme who are represented by the bargaining agent.

(4) In this section,

- (a) “insurance scheme” means a medical, dental, disability, life or other insurance scheme normally maintained by the employer on behalf of the employees in the unit;
- (b) “premiums” includes all amounts payable by the employees and the employer in consideration for a contract of insurance.

30 Section 49 is repealed.

31 Section 68 is repealed.

30 Section 49 presently reads:

49 No employee shall refuse to perform work for the employee's employer for the reason that other work was or will be performed or was not or will not be performed by any persons or class of persons who were or are not members of a trade union or a particular trade union.

31 Section 68 presently reads:

68(1) Notwithstanding anything in this Act, the Judicature Act or any other Act, when an action occurs that either party considers to be a strike or lockout, no injunction before trial shall be granted ex parte to

(a) a party to the dispute, or

(b) any other person or party

to restrain a party to the strike or lockout from doing any act in connection with the strike or lockout.

(2) Every affidavit intended to be used in support of an application for an interim injunction to restrain a person from doing any act in connection with a strike or lockout shall be confined to those facts that the deponent is able of the deponent's own knowledge to prove, and a copy of the affidavit shall be served with the application.

(3) If members of a trade union are the defendants or intended defendants, the application may be served on an officer of the trade union or a member of it who is engaged in the activity proposed to be restrained or a person engaged in that activity.

32 Section 69 is amended

- (a) in subsection (1) by adding “contrary to this Act” after “strike of employees”;**
- (b) in subsections (3), (5) and (6)(a) and (b) by adding “contrary to this Act” after “strike”.**

(4) The application shall be served in sufficient time before the time fixed for the hearing, not being less than 4 hours in any event, to enable the person to attend at the hearing of the application.

32 Section 69 presently reads:

69(1) If a strike of employees commences, the employer, notwithstanding any collective agreement or any other provision of this Act, may serve the bargaining agent that represents those employees with a notice of intention to suspend the deduction and remittance of union dues, assessments or other fees payable to the bargaining agent.

(2) A notice of intention under subsection (1) shall specify

(a) the bargaining unit or part of the bargaining unit with respect to which the employer intends to suspend the deduction and remittance of union dues, assessments or other fees, and

(b) a time period of not less than one month and not more than 6 months with respect to which the employer intends the suspension to be in effect.

(3) A bargaining agent affected by the notice under subsection (1) may apply to the Board within 72 hours after service of the notice, but not afterwards, for a determination as to whether a strike has occurred.

(4) If the bargaining agent does not make an application under subsection (3), the employer may suspend the deduction and remittance of union dues, assessments or other fees in accordance with the notice of intention under subsection (1) at any time after 72 hours from the service of the notice.

(5) If the bargaining agent makes an application under subsection (3), the employer shall not suspend the deduction and remittance of union dues, assessments or other fees unless and until the Board makes the determination under subsection (6)(b) that a strike has occurred.

(6) If the bargaining agent makes an application under subsection (3), the Board may

- (a) *if it determines that no strike has occurred, cancel the notice of intention under subsection (1), or*
- (b) *if it determines that a strike has occurred, confirm the notice of intention under subsection (1) and order that the suspension may take place*
 - (i) *for the period specified in the notice of intention, or*
 - (ii) *for a period of not less than one month and not more than 6 months specified by the Board,*

and, on that order being made, the employer may suspend the deduction and remittance of union dues, assessments and other fees in accordance with the notice of intention.

(7) Unless sooner revoked by the employer, the suspension under subsection (4) or (6) shall continue

- (a) *until the end of the period specified in the notice of intention under subsection (1), or*
- (b) *if the Board has specified a period under subsection (6), until the end of that period.*

(8) Notwithstanding any collective agreement or any other provision of this Act, an employee does not become ineligible for employment with an employer only because the employee fails to pay union dues, assessments or other fees the deduction and remittance of which have been suspended under this section.

(9) At the end of the suspension period as determined under subsection (7), the employer shall resume the deduction and remittance of union dues, assessments and other fees in accordance with the collective agreement, but nothing in this subsection requires the employer to deduct and remit union dues, assessments and other fees with respect to the suspension period.

(10) No provision may be made in a collective agreement in substitution for the suspension of the deduction and remittance of union dues, assessments and other fees under this section.

33 Sections 70 to 73 are repealed and the following is substituted:

Penalties re prohibited strikes

70(1) A trade union that causes a strike contrary to this Act is guilty of an offence and liable to a fine not exceeding \$1000 for each day that the strike continues.

(2) An officer or representative of a trade union who strikes or causes or consents to a strike contrary to this Act is guilty of an offence and liable to a fine not exceeding \$10 000.

(3) A person who is not a trade union or an officer or representative of a trade union who strikes or causes a strike contrary to this Act is guilty of an offence and liable to a fine not exceeding \$1000.

Penalties re prohibited lockouts

71(1) An employer that commences or causes a lockout contrary to this Act is guilty of an offence and liable to a fine not exceeding \$1000 for each day that the lockout continues.

(2) A person not referred to in subsection (1) who commences, causes or consents to a lockout contrary to this Act is guilty of an offence and liable to a fine not exceeding \$10 000.

Specific offences

72 An employer, employee or other person who

- (a) contravenes or fails to comply with any request or notice of the Board, the Chair, a vice-chair or any other officer of the Board,
- (b) wilfully delays or obstructs an officer in the exercise of any power or duty given to the officer under this Act,
- (c) fails to produce any books, records, documents, papers, payrolls, contracts of employment or other record of employment that the employer, employee or other person is required to produce,
- (d) conceals or attempts to conceal an employee or seeks to prevent the employee from appearing before or being examined by an officer, or

33 Sections 70 to 73 presently read:

70(1) No person or trade union shall cause or attempt to cause a strike by the persons to whom this Act applies.

(2) No person to whom this Act applies shall strike or consent to a strike.

71(1) Any trade union that causes or attempts to cause a strike contrary to section 70 is guilty of an offence and liable to a fine not exceeding \$1000 for each day that the strike continues.

(2) Any officer or representative of a trade union who strikes or causes or consents to a strike contrary to section 70 is guilty of an offence and liable to a fine not exceeding \$10 000.

(3) Any person who is not a trade union or an officer or representative of a trade union who strikes or causes a strike contrary to section 70 is guilty of an offence and liable to a fine not exceeding \$1000.

72(1) No person shall cause or attempt to cause a lockout by an employer.

(2) No employer shall lockout or consent to a lockout.

73 A person who contravenes section 72(1) is guilty of an offence and liable to a fine of not more than \$10 000.

(e) makes a complaint to the Board knowing it to be untrue,
is guilty of an offence.

General offence and penalty

73 Subject to sections 70 and 71, a person, employee, employer or trade union that contravenes or fails to comply with any provision of this Act or of any decision, order, directive, declaration or ruling made by the Board under this Act is guilty of an offence and liable

- (a) in the case of a corporation or trade union, to a fine not exceeding \$100 000, or
- (b) in the case of an individual, to a fine not exceeding \$5000.

Part 3
Coming into Force

34 Section 8 with respect to the enactment of sections 95.9, 95.91 and 95.92 of the *Labour Relations Code* is deemed to have come into force on the day the Bill to enact *An Act to Implement a Supreme Court Ruling Governing Essential Services* received first reading.

Part 3
Coming into Force

34 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To