Bill 32 Summary and Analysis

On July 7, 2020, the UCP government introduced *Bill 32* in the Alberta legislature. This bill will make 27 changes to the *Employment Standards Code* and 44 changes to the *Labour Relations Code*, as well as various changes to other pieces of legislation that regulate labour relations within the police force, the education sector, and the provincial public service.

When passed, the changes proposed in this omnibus bill will have a large and negative impact on unionized and non-unionized workers across the province. The goal of the bill is to reduce the compensation that workers get for their labour and to radically transform labour relations in the province by moving the labour legislation much further to the employers' side. The changes also intend to make it difficult for unions to raise issues of concern for members and to advocate publicly for their interests.

This document provides a summary of the changes relevant to CUPE members. First, it presents the changes to the rules on collecting union dues, for these changes will be crucial to the day-to-day operation of our locals; second, it summarizes other changes in the *Labour Relations Code*; and third, it summarizes the changes to the *Employment Standards Code*. *Bill 32* also makes other amendments to the *Labour Relations Code* that affect interest arbitration for academic staff associations and collective bargaining in the construction sector. Those amendments are not covered here.

Labour Relations: Changes to Weaken Collective Bargaining and Punish Unions

New Rules on Unions Dues

Bill 32 adds a new section to the *Labour Relations Code* (Section 26.1) to regulate how unions collect and spend union dues. In our view, these changes violate the *Charter* freedom of expression and freedom of association rights of CUPE and our members. The details on how the rules established in this section will operate are not yet available. Because the bill will enact extensive regulation-making powers about the specifics of this section, details will be revealed later as government regulations are released. At a high level, however, s. 26.1 operates as follows:

1) Unions divide expenses into two categories.

2) Unions provide information to each employee in the bargaining unit regarding the expenses in each category.

3) Employees in the bargaining unit (including union members) must elect or opt-in before dues are collected or used for political activities. Employees who do not opt-in pay a lower dues rate.

4) An employee can challenge the adequacy of the information provided by the union or the union's allocation of expenses at the Alberta Labour Relations Board (the board).

5) The board can order remedies ranging from directing the union to comply with legislation, to restitution to employees, and suspension of dues collection by employers.

Bill 32 requires unions to divide expenses into two categories. We refer to these two categories simply as categories A and B. Category A "relates to political activities and other causes". Category B "directly relates" to activities under the *Labour Relations Code*.

Category A includes:
- General social causes or issues,
- Charities or NGOs,
- Organizations or groups affiliated with or supportive of a political party, and
- Any other activities prescribed by regulation.

Category B includes:
- Activities under the *Labour Relations Code*,
- Activities relating to collective bargaining,
- Activities relating to representation of members,
- Activities that do not fall within other categories. (This may capture social activities that are not related to bargaining.)

Once a union has allocated expenses into these two categories, it must provide each employee in the bargaining unit information regarding the percentage of dues that relates to either category A or B. The union must also provide any information required or reasonably requested by a person to make an informed decision on opting-in. Unions cannot collect any dues until this information has been provided to employees.

After employees have the information, they should make an election. The legislation prevents unions from collecting dues from an employee for category A activities unless the employee has made an election to opt in. Employers are explicitly prohibited from collecting the portion of dues related to political activities in the absence of such an election. The requirement to opt-in applies even to union members who have already authorized dues deduction and is revocable.

A union cannot expel or suspend a member because the member hasn't made an election or has revoked their election. Employee elections must be communicated to employers for dues check off.

The board will decide disputes regarding the allocation of union dues to each category, whether the election was made in accordance with the regulations, and whether the financial information provided is sufficient.

There are a lot of details that we do not yet know about how this new framework will operate. Regulations could include:

- The information required and form of financial statements,
- The effective date of the opt-in requirement,
- Prescribing specific expenses that relate to political activities and general social causes or directly relate to bargaining or representation of members (for example, in the debate on *Bill 32*, Jason Kenney has repeatedly referenced the Alberta Federation of Labour and CUPE's political campaigns as examples. A regulation could say these are category A activities.),
- Factors for the purposes of determining whether an expense falls in category A or B,
- The timing and frequency of setting or charging union dues, including changes to the category A percentage,
- The timing, circumstances, and procedure for making or revoking an election (For example, there could be limited time periods where elections or revocations have to occur, a specific form or specific language that must be used.),
- What information, and the form and manner of information unions must provide before individuals opt-in,
- What information, and the form and manner of information provided to employers, and
- Defining any term. (For example, the regulations could define union dues or non-governmental organizations.)

The board can order a wide range of remedies if a union does not comply with the legislation. For instance, the board can order the union to produce information, adjust the percentage calculated for category A activities, order the union to cease collection of union dues in contravention of the legislation, order the union to provide restitution to employees of union dues already paid, or suspend the union's ability to collect all dues from employers or employees.

The new section on union dues may be found to be unconstitutional as it infringes on the constitutionally protected freedom of association and freedom of expression. It is inspired by rules that allow employees to opt out of a political portion of dues and by the right to work models of labour relations imported from the U.S. It is a radical break with the Canadian legislative framework that has governed labour relations since the end of World War II. Additional details on this section will be provided as they become available.

Changes that Affect Union Organization and Collective Bargaining

Preamble: Is amended to add "expedient" to how disputes on the terms and conditions of employment should be resolved. This addition contrasts with several changes to the code that remove mandatory timelines for the resolution of disputes around specific matters.

Definition of employee: The nurse practitioner exclusion is removed from the *Labour Relations Code*. This is a positive change, as nurse practitioners will now be covered by the code and will be able to join unions and bargain collectively.

Certification: Current timelines for employers to respond to a certification application and for a vote to take place are removed. Now the final decision on certification should happen within six months from the application date. This change will unnecessarily delay the process of certification and provide opportunities for employers to engage in illegal practices. If the union engages in an unfair labour practice, it cannot re-apply for certification for six months (up from 90 days).

Remedial certification: Remedial certification allows the labour board to certify a union without a vote in limited circumstances where the employer has engaged in unfair labour practices. The changes restrict when remedial certification will be available to "only if no other remedy or remedies would be sufficient to counteract the effects of the prohibited practice".

First contract arbitration: First contract assistance is retained in *Bill 32*, but access to arbitration is severely restricted. The board can order arbitration only if it is satisfied arbitration is necessary, the employer has failed to comply with the act and no other remedy would be sufficient to counteract the effects of failure to comply. The parties will now be able to take strike or lockout votes only after enhanced mediation.

Open periods: Applications to decertify or change unions are currently timely during an open period that occurs at minimum every two years in the two months prior to the anniversary or expiry of a collective agreement. Bill 32 allows unions and employers to avoid an open period by early negotiation and ratification of a new collective agreement. Although employees must be informed that ratification will prohibit an application for certification, this change responds to a court decision that guaranteed the right of employees to change unions during the open period. Because employer's cooperation is required, this primarily benefits pro-employer associations like CLAC.

Picketing: There are new restrictions on picketing. S. 84 already prohibits picketing that includes wrongful acts. "Obstructing or impeding a person who wishes to cross a picket line from crossing the picket line is a wrongful act," is added. This is designed to reduce the effectiveness of picketing. It should be read in conjunction with *Bill 1* which creates significant new penalties for entering, damaging, obstructing or interfering with essential infrastructure (including roads, sidewalks and driveways) without lawful right, justification or excuse.

Secondary picketing: Picketing at premises other than the worksites of employees is now prohibited without permission from the board. This change will make it easier for employers to move work to other facilities during labour disputes and/or to rely on their allies to do the work. Changes to picketing contradict decisions from the Supreme Court of Canada that state that picketing and secondary picketing are protected under the *Charter of Rights*. If challenged, these provisions may be found to be unconstitutional.

Penalties for illegal picketing, strikes and lockouts: Previously the board could file a directive to cease an illegal strike or lockout with the court, making it enforceable as a

judgement of the court. After *Bill 32*, the board will have to file an order with the court upon request of a party but may also file an order without request. As a penalty for illegal strikes or picketing, the board can direct an employer to suspend deduction and remittance of dues for 1-6 months. This kind of punishment goes beyond the remedial philosophy that is central in Canadian labour legislation.

Arbitration: An arbitrator will no longer have the ability to extend time limits for filing and forwarding grievances to arbitration. This is a return to the law in place prior to the 2018 amendments. Unions will need to be vigilant in processing grievances within collective agreement timelines.

The requirement that arbitrators make decisions "within the principles of Canadian labour arbitration" will be removed.

The statutory standard of review of arbitration decisions will be removed. The board will also be able to award costs on applications to review arbitration decisions. These changes mean the parties will have to argue about the standard of review, adding time and complexity to applications for review of arbitration decisions.

Unfair labour practices: There are new unfair labour practices added to the *Labour Relations Code* that correspond to the new union dues framework. Also, the reverse onus in unfair labour practices is restricted to complaints involving dismissal and discharge. This limitation on the reverse onus provides a very real procedural advantage to employers who break the law by engaging in unfair labour practices other than dismissals.

Duty of fair representation: The board currently dismisses many duty of fair representation complaints after the union files its response but before a hearing. This is called summary dismissal. *Bill 32* expands or clarifies the grounds for summary dismissal of a duty of fair representation complaint to include when an employee has rejected fair and reasonable settlement.

Financial disclosure: *Bill 32* creates a new section to require unions to give financial statements to every member every year. The financial statement should contain details prescribed by regulations and show the union's "financial condition and operation". Members can follow a complaint procedure to dispute the adequacy of the statements. The regulations might be different for different unions.

Procedural changes: A chair or vice chair sitting alone can hear reviews of arbitration decisions and can hear other matters where the chair is of the opinion it is necessary due to an emergency. The grounds for summary dismissal have been expanded to add filed with improper motive or an abuse of process as grounds.

Employment Standards: Changes to Pay Workers Less

Averaging arrangements: *Bill 32* eliminates averaging "agreements" and replaces them by averaging "arrangements" that can be unilaterally imposed by employers. These arrangements allow employers to average hours in order to avoid overtime

payments. While averaging agreements had to be renewed every 12 weeks, the new arrangements can be imposed for up to 52 weeks, effectively ensuring affected workers never receive overtime pay. These rules only apply where there is no collective agreement. Where there is one, hours of work averaging must be agreed upon.

Final pay deadline: The timelines for an employer to issue final payment following termination of an employee are extended. Employers can now choose to pay the employee's earnings either within 10 days of the end of the pay period or within 31 days after the end of employment.

Rest periods: Employers are no longer required to provide employees with a 30-minute rest period within the first five hours of work. Instead, they can provide this rest period after the five hours of work or at any other time "agreed" by the employee. In practice this might mean longer shifts with no rest for workers.

Holiday pay calculations: Average daily wage calculation for the purposes of calculating holiday pay will no longer be based on 5% of an employee's wages, vacation, and holiday pay. Instead, it will only be based on the employee's total wages over a four-week period. In most cases, this will decrease the amount that employees receive as holiday payment because the calculation excludes vacation and holiday pay received in the four-week period.

Expanded Variances: Variances are permissions to breach the *Employment Standards Code* for specific workers or work situations. *Bill 32* makes it easier for employer associations or groups to get industry-wide variances, which can be renewed indefinitely. It also expands the scope of ministerial authority, decreases requirements to inform workers, and eliminates the requirement that the director ensure that a variance "meets the criteria established by the regulations". This would allow employers, for instance, to indefinitely breach minimum wage rules.

Overpayment recovery: Written employee consent is no longer required for overpayment recovery. An employer will now be able to recover an overpayment made to an employee within six months of the overpayment being made, if the employer provides the employee advance written notice.

Temporary layoffs: The temporary layoff period is extended from 60 days to 90 days within a 120-day period. Following the 90-day period, a temporary layoff will be deemed a termination and termination pay will be payable. Notice requirements for temporary layoff notices will be removed. The duration of layoffs is not applicable if your collective agreement has a longer layoff period (e.g., recall rights for 12 months). The elimination of notice requirements will affect any collective agreement that refers to the *Employment Standards Code* layoff notice.

Group termination: Employers no longer must provide notice of group terminations to unions or employees. The notice only has to be provided to the minister and is reduced significantly to four weeks.

Vacation Calculation: *Bill 32* clarifies that job-protected leaves are included towards calculating years of service for calculating vacation.

Different provisions under collective agreements: Employers may be able to deviate from certain employment standards (e.g., hours of work, notice of work times, notice of temporary layoff) through the terms of a collective agreement. There is already a section of the *Employment Standards Code* that ensures a greater benefit in a collective agreement applies instead of the *Employment Standards Code*. The addition of specific language allowing different provisions, rather than only greater provisions, may undermine the minimum standards function of the *Employment Standards Code*.

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