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Alberta's Bill 9 and the Issue of Workers' Rights

Alberta Court Grants Injunction Suspending Bill 9



Information picket against Bill 9, Misericordia Hospital, Edmonton, August 30, 2019

The Alberta Union of Provincial Employees (AUPE) was successful in its application for an injunction against Bill 9, the *Public Sector Wage Arbitration Deferral Act*. The Kenney government immediately appealed the July 30 injunction. The Court of Appeal said it will soon issue a ruling as to whether the injunction remains in place.

As a result of the injunction, arbitration hearings on wage reopeners for public sector workers were rescheduled and concluded on August 12. Release of the arbitrator's decision cannot take place before the Alberta Court of Appeal issues its ruling.

Justice Macklin stated in his decision confirming the injunction that Bill 9 makes collective bargaining between government and employee representatives effectively impossible. He concluded that if governments can tear up collective agreements on a whim, then collective bargaining would become meaningless.

The Justice found that the time lines for arbitration were a substantive term in the collective agreement, which Bill 9 unilaterally nullified. The delay in arbitration was "wholly the result of the unilateral act of one of the parties [the Alberta government], and could not be compared to a delay caused by a scheduling issue, illness or witness unavailability.... Having given up its right to strike and two years of no increase in wages, [AUPE] will have lost the one benefit it did gain -- having an arbitration take place within specified timelines. Further, it may be difficult, if not impossible, to confidently negotiate detailed terms and conditions of a collective agreement knowing that at any time after an agreement was reached, the terms and conditions could be unilaterally amended or nullified by legislation."

(Photos: AUPE)



Alberta's Abusive Bill 9

The Alberta Kenny government passed Bill 9, the *Public Sector Wage Arbitration Deferral Act* on June 28.

Bill 9 unilaterally tears up provisions in the collective agreements covering 180,000 Alberta public sector workers. The workers and their union the Alberta Union of Provincial Employees did not give their consent to the changes and have organized widespread opposition to the government's action. Bill 9 is a concern for workers across Canada.

The Kenny government is targeting the clauses in the agreements that require arbitration on wages to begin at latest by last June 30. Bill 9 delays the start of arbitration on wages so that his government can put in place legislation dictating public sector wages without negotiations or the consent of public sector workers. All this is being done in contravention of the signed contracts negotiated in good faith with public sector unions, which were accepted by both the previous government and workers.

Many workers have commented that while public sector workers are the specific target of Bill 9, the unilateral changing of a collective agreement is a general attack on the working class and its right to a say and control over wages, conditions of work and their living standards generally. Bill 9 at the very least violates workers' right to negotiate terms of employment and to have those terms upheld in a climate of equilibrium and not arbitrariness and dictate.

Alberta Court of Queen's Bench Justice Cites Supreme Court Decision

In his decision suspending the Alberta government's Bill 9, the *Public Sector Wage Arbitration Deferral Act*, Justice Macklin cites the decision of the Supreme Court of Canada in *Mounted Police Association of Ontario v Canada (Attorney General)*, [2015] 1 SCR 3, 2015 SCC 1).

Justice Macklin states, "The [Supreme] Court confirmed that protection for a meaningful process of collective bargaining requires that employees have the ability to pursue their goals and that, at its core, s. 2(d) aims... to protect individuals against more powerful entities. By banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires. In this way, the guarantee of freedom of association empowers vulnerable groups and helps them work to right imbalances in society... [at para. 58][31] The ability of one party to unilaterally change the terms of a collective agreement also raises a serious issue about whether that balance of power protected by s. 2(d) has been infringed."

Renewal Update will follow the court proceedings through the Court of Appeal and possibly to the Supreme Court keeping readers abreast of how the arguments are nuanced.

Bill 9 Information Pickets Held Across Alberta in "Summer of Action"



Lethbridge, August 19, 2019

The Alberta Union of Provincial Employees organized a Summer of Action with militant pickets at hospitals and other workplaces to oppose the Kenny government's anti-worker Bill 9. The workers said *No!* to Bill 9 and the Kenney government's attacks on their rights and on the public services essential to the people of Alberta. Thousands of workers participated in the pickets at hospitals in Calgary, Camrose, Edmonton, Lacombe, Lamont, Leduc, Lethbridge, Tofield, Two Hills, Stony Plain, Vegreville, and Wetaskiwin.

Members of the United Nurses of Alberta, Health Sciences Association of Alberta, and the Canadian Union of Public Employees who also represent workers in the hospitals joined the pickets in large

numbers. Workers from many other unions also joined in. Workers poured out of their workplaces during the lunch hour to join the pickets. They expressed their determination to defend their rights and the public services they provide against the anti-social offensive of the Kenney government. With one voice, the workers said *No!* to the government's dictate and contempt for the rule of law and workers' rights. They said *Yes!* to their right to a say on their wages and working conditions. The large turnout and militancy of the summer actions expressed the determination of workers to defend their rights and not accept government dictate.



Misericordia Hospital, Edmonton, August 30, 2019.



Yellowhead, August 16, 2019.



Cold Lake, August 10, 2019



Calgary, July 31, 2019



Red Deer, July 29, 2019

(Photos: AUPE)

On the Subject of Imposing Limits on Workers' Rights in the Name of Public Interest - Comment

- Peggy Morton -

Governments and the courts consider that the right of public sector workers to collectively bargain and decide on their terms of employment must be "reasonably limited" because of a perceived conflict with the public interest. The governments and courts give themselves the right to define the "reasonable limits" of public sector collective bargaining because of this so-called conflict with the public interest. They define the public interest according to the private interests of the financial oligarchy.

The declared conflict between workers' rights and the public interest is also extended to include the national interest, as the Trudeau Liberal government did with the rotating strikes of postal workers last November. The Liberal government in the "national interest" imposed Bill C-89 the *Postal Services Resumption and Continuation Act* to end the rotating strikes, effectively blocking postal workers from using the weapon of a withdrawal of their capacity to work to force management to negotiate and resolve outstanding issues within a new collective agreement. Again the national interest is defined by those in control and not by the concrete conditions, needs and rights of the working people.

The government also limits the right of private sector workers to collective bargaining within the confines and reference point of a self-declared public or national interest such as with the case of railway workers and others. The "right of property" is also invoked to limit the human rights of private sector workers.

Within the "reasonable limits" of its reference point of workers' rights in conflict with the public and national interest as defined by the financial oligarchy, the Supreme Court as well as lower courts have upheld the "right" of governments to impose wages and working conditions on workers without the consent of those affected. This has occurred despite all the high-sounding phrases about a Charter right to collective bargaining and the right to strike.



The Kenny Alberta government declares it has a mandate from the election to "reasonably limit" the existing collective agreement of public sector workers. This expresses the control the government has to define the public interest and impose its definition on working people.

An Alberta court found that Bill 9 goes beyond its reference point of "reasonable limits" and definition of public interest and granted an injunction allowing arbitration on a wage reopener to proceed. However, the injunction did not prevent the government from appealing the ruling to a higher court, and if that fails, to pass new legislation directly imposing wage controls on the 180,000 workers.

This violation of the rights of workers uses deceptive words about defending the public interest within "reasonable limits" without exposing who defines the public interest, while the true intent is to

attack the wages and working conditions of the working class and trample on its rights.

Workers across Canada should give this serious thought. The issue boils down to who controls and who decides. In this election workers should speak out forcefully on these important issues. *Empower Yourself Now!*

Peggy Morton is the MLPC candidate in Edmonton Centre in the 2019 federal election.

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