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Striking Alberta Hospital Workers Ordered Back to Work
Abolish the Unlimited Powers of the
Alberta Labour Relations Board

- *Dougal MacDonald* -



Picket by University of Lethbridge faculty at Chinook Hospital, October 27, 2020, in support of health care workers.

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On Monday, October 26, hospital workers, members of the Alberta Union of Provincial Employees (AUPE), walked off the job. AUPE reports that walkouts took place in close to 39 cities and towns and 49 workplaces across Alberta. On Monday night, the Alberta Labour Relations Board (ALRB) ordered the striking AUPE workers back to work, claiming that the action contravened Alberta's *Labour Relations Code*. The speed of the decision was in stark contrast to the long-drawn-out

procedures followed whenever an employee complaint is made.[1]



The Alberta *Labour Relations Code* perpetuates the existence of the all-powerful ALRB. Under the Code, all labour disputes are removed from the public courts and decided by the Board which is composed of persons appointed by the government.

The aim of the ALRB is to streamline and speed up settlement of labour disputes to try to ensure "industrial peace" so the rich can continue to be paid without disruption. To this end, the ALRB has been given sweeping, dictatorial powers. It can conduct inquiries and hearings, issue orders and directives, make rules, determine which unions shall represent which workers, decide when a collective agreement is in effect, demand the production of records and documents, require statements to be furnished, enter and inspect union premises, question employees, restrict picketing, levy fines, decertify unions, etc. The ALRB is almost like a legislative body which makes up its own rules as it goes along.

It is said that the 45-member ALRB is neutral and "fair" to the workers because it includes trade unionists (including some from AUPE). However, the union representatives on the ALRB have no independence and can only apply the statutes of the Code. They have no power to make or amend any of the legislation to make it favourable to the workers. The anti-worker Bill 32, the so-called *Restoring Balance in Alberta's Workplaces Act, 2020* removed the discretionary power of the ALRB with regard to the court filing of an order made with regards to an "illegal strike or lockout." The Board must now file the order with the Court on the request of a Party, which in this case would be Alberta Health Services. On filing, the order is enforceable as a judgment or order of the Court, which means that failure to comply with the order can be considered contempt of court.

An objective analysis of Alberta's *Labour Relations Code* reaffirms workers cannot rely on legislation or government boards to serve their interests. The Code illustrates that the employers have the entire power of the state on their side while the workers' only weapon is the force of their organized numbers as was seen in their actions on October 26. The government may have prevailed in imposing its "rule of law" through the decision of the labour board which automatically becomes a decision of the courts. But the government scored no win in the court of public opinion. Across Alberta widespread support and solidarity is being expressed for the hospital workers. People are speaking out to denounce the government and saying that it is utterly contemptible to use the pandemic as a pretext to launch these attacks on workers.

The workers must build their own powerful opposition based on their own thinking, perspective, and program in order to defend their own rights and the rights of all.



Note

1. For example in May 2020 United Food and Commercial Workers Union Local 401 asked that the Alberta Labour Relations Board (ALRB) hold an emergency hearing and requested "interim relief," pointing to the irreparable harm if workers at Cargill were required to return to work without their union being able to determine if they could do so safely. WF pointed out at the time:

“It is difficult to imagine a situation more fraught with the danger of irreparable harm, with half of the workers already positive for COVID-19, the death of a worker and close contact, and others who are seriously ill in hospital, some in intensive care. Despite the clear urgency of the matter and where 85 per cent of the workers had indicated that they felt it was unsafe to work, the ALRB set the hearing date for May 7, three days after the plant was to reopen, and appointed a mediator to meet with the parties over the weekend.” (*Workers’ Forum, May 7 2020*)

(Photos: WF, AUPE, Friends of Medicare)



New Outbreak at Olymel's Meat Processing Plant in Vallée-Jonction, Quebec

Workers' Proposals Must Be at the Centre of Solutions to Curb COVID-19

- Normand Chouinard -



Vallée-Jonction workers protest withdrawal of pandemic pay, June 23, 2020

How to practically solve the problem of mobilizing the vast majority of workers in discussion and decision-making to fight the pandemic is key at this time. Quebec's National Public Health Institute

and its Director, Dr. Horacio Arruda, stated on October 20 that 46 per cent of the current outbreaks in the second wave of the pandemic in Quebec are happening in workplaces. It clearly makes sense that workers have a role to play in addressing this situation.

This task seems straightforward enough, but it is facing many obstacles. The reason for this is that the current forms of public authority block the participation of workers in decision-making and the search for solutions.

Olymel's pork slaughtering and butchering plant in Vallée-Jonction is a revealing example. At the beginning of the pandemic, this plant experienced a significant number of COVID-19 cases. This was followed by an ensemble of sanitary measures and the creation of a specific protocol for this type of industry. The Public Health Institute, the Labour Standards, Pay Equity and Workplace Health and Safety Board (CNESST), Olymel management and, to a certain extent, municipal, Quebec and federal elected officials participated in the discussion and decisions regarding the directives to be adopted. It should be remembered that the Olymel Vallée-Jonction Workers' Union, which is affiliated with the Confederation of National Trade Unions (CSN) was not given a real say as the representative of more than 800 production workers. In particular, the union had proposed several measures for physical distancing on the production lines and the company did nothing to implement them.

The application of the protocols and the monitoring of health guidelines were supposed to reduce the risk of contagion in the plant.



However, we recently learned that a second major outbreak of COVID-19 at this plant is again raising the problem of how to curb contagion in the agri-food industry, an industry that is very high risk and at the same time, essential. So far, there are at least 114 COVID-19 cases in this plant, and most sadly, the death of one worker.

Following this new outbreak, the same authorities who were there this spring held an urgent meeting to follow up on the situation. The Chaudière-Appalaches Regional Public Health Department (DRSP) decided to test almost all of the

employees.

Olymel's senior management rejected the union's proposal to close the plant for two weeks, citing its obligation to respect contracts with its customers and the need to avoid an overload of live hogs that could not be slaughtered if the plant was closed. This is a problem that arose this spring during the complete closure of its plant in Yamachiche. It should also be mentioned that neither the DRSP or the CNESST recommended the closure of the plant, which, according to information gathered by *Workers' Forum*, created a lot of discontent among the workers.

According to Martin Maurice, President of the Olymel Vallée-Jonction Workers' Union-CSN, the company's relaxation of sanitary measures over the summer may have facilitated this new outbreak. "We would like to convey our condolences to the family and loved ones of our deceased colleague. For us, one death is one too many," he said on the union website. "From the first wave of the pandemic, we demanded protective measures to adequately protect all workers at the plant. However, this past summer, we questioned the employer in connection with the relaxation of certain health measures that had been put in place to prevent any outbreak. The return of overtime and the cancellation of the 10-minute buffer period between shifts are two concrete examples of this relaxation. Also, several subcontractors are working at the plant and we don't even know if they are respecting the protective measures that are in place regarding movement from one workplace to

another." He also said that the lack of training of some workers may have contributed to the outbreak.

Although the Vallée-Jonction workers consider that the authorities involved in the fight against the pandemic each have a role to play, they do not accept being sidelined or participating only in some consultations. They are well aware that at the end of the day their proposals will likely be rejected, as has been the case since the beginning of the pandemic. The workers are engaged in a battle to decide who will become the driving force in making decisions that affect them, and this goes beyond mere consultation. They want to participate directly in the major decisions related to production, notably the pace of work, the organization of production on the lines, safe bus transportation procedures for temporary foreign workers, the movement of workers between departments, overtime and schedules. They are refusing to simply be subjected to the decisions made by the authorities. They want to affirm themselves as a new decision-making authority that must be relied on to find solutions to the problems caused by the pandemic. The more workers engage in discussion and decision-making, the more influential their authority will be.



Workers are learning, in their struggle for safety and through their daily relationships and interactions in the production process, to become decision-makers.

This struggle is raging in many workplaces in Quebec and Canada in the context of the fight against the pandemic. It is precisely the workers' success in this battle that the old forms of authority want to stop by preventing workers from becoming a new public authority.

(Quotations translated from original French by Workers' Forum. Photos: WF, Conseil central de Québec Chaudière-Appalaches - CSN)



Ontario Government Bill on Long-Term Care
Ford Government Protects Long-Term Care
Operators from Liability

- Steve Rutchinski -

Those responsible for the deplorable record of COVID-19 transmission and deaths in Ontario's long-term care homes have received a "get out of jail free" card. Ontario Bill 218, the *Supporting Ontario's Recovery and Municipal Elections Act, 2020*[1] prohibits legal action against those whose actions or inactions resulted in the high number of deaths of seniors in Ontario's long-term care facilities, unless gross negligence can be proven. The bill was referred to the Standing Committee on Justice Policy following second reading on October 27. Many legal opinions have already been given and it is generally agreed that "gross negligence" is a very high bar to meet.



Schedule 1 of the bill, entitled Protection from Liability, "provides that no cause of action arises against any person as a direct or indirect result of an individual being or potentially being infected with or exposed to coronavirus (COVID-19) on or after March 17, 2020 as a direct or indirect result of an act or omission of the person if,

"(a) at the relevant time, the person acted or made a good faith effort to act in accordance with,

- (i) public health guidance relating to coronavirus (COVID-19) that applied to the person, and
- (ii) any federal, provincial or municipal law relating to coronavirus (COVID-19) that applied to the person; and

"(b) the act or omission of the person does not constitute gross negligence."

Dotting the "i" of impunity, the bill specifies that "good faith effort" includes an honest effort, **whether or not that effort is reasonable.** (*Emphasis added.*)



The bill also makes sure to:

- bar future legal proceedings: "No proceeding that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against a person."
- dismiss legal proceedings in progress: "Any proceeding referred to in subsection (4) that is commenced before the day this Act comes into force is deemed to have been dismissed, without costs, on the day this Act comes into force."
- prohibit compensation: "No person is entitled to any compensation or any other remedy or relief for

the extinguishment or termination of rights under this Act."

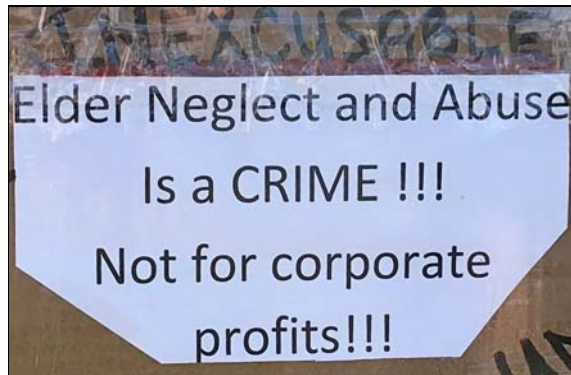
The bill apparently has no effect, however, on the *Workplace Safety and Insurance Act*: "Nothing in this Act affects the exclusive jurisdiction of the Workplace Safety and Insurance Appeals Tribunal to determine a matter described in subsection 31 (1) of the *Workplace Safety and Insurance Act, 1997.*"

Canada's record of COVID-19 infections and deaths in long-term care facilities, especially for-profit privately owned corporate long-term care businesses, is appalling. In June, as the first wave was settling down, long-term care residents accounted for 81 per cent of all reported COVID-19 deaths in Canada, compared with an average of 38 per cent in other OECD countries. In Canada, more than 9,650 long-term care staff members were infected by COVID-19, representing more than 10 per cent of the country's total cases.[2]

The Ontario Health Coalition (OHC) reports that at least two dozen legal actions have been filed as a result of the conditions in long-term care homes and the responses to the spread of the virus, during the first wave of the COVID-19. The OHC has a list of legal actions in progress in the Briefing Note section of their website.[3]

One such case is a class action suit "against Chartwell Retirement Residences and Long-Term Care Homes for their alleged failures in outbreak planning, precautions and response relating to COVID-19 resulting in preventable resident deaths and unnecessary suffering for their family members. [...] brought on behalf of all persons who live or lived at a Chartwell Home from January 10, 2020 to the end of the pandemic date, which is currently unknown."

Seventy-seven people died in four Chartwell facilities in the first wave. Another nine residents have died at one Chartwell location thus far in the second wave, as of October 25, and at least 16 staff have contracted COVID-19 at various Chartwell homes since the second wave outbreaks. Chartwell operates eleven long-term care homes in Ontario.



Granting protection from prosecution to those responsible for what is a national disgrace and considered by many to be an outright crime is outrageous. The rich have the power to act, or not to act, with impunity. Do we need more clear evidence that this is a democracy of the rich, for the rich? These days will not be forgotten and the time will come when those responsible are held to account!

Notes

1. The full official name of Bill 218 2020 is *An Act to enact the Supporting Ontario's Recovery Act, 2020 respecting certain proceedings relating to the coronavirus (COVID-19), to amend the Municipal Elections Act, 1996 and to revoke a regulation.*
2. "Pandemic Experience in the Long-Term Care Sector: How Does Canada Compare With Other Countries?" CIHI Snapshot, June 2020, Canadian Institute for Health Information, Ottawa, ON.
3. Ontario Health Coalition, Briefing Note: COVID-19 in Long-Term Care Litigation & Legal Actions.

(Photos: WF, SEIU, Unifor)

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