civic service union

UCP Abandons Decades-old Agreement

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Introduction

On July 7, 2020, the Alberta Government announced *Bill 32: Restoring Balance in Alberta's Workplaces Act* claiming to "restore balance to Alberta's workplaces, support economic recovery and get Albertans back to work" (YourAlberta, 2020, 2:34). This essay aims to provide the reader with the historical development of the regulatory regimes in industrial relations as an explanation to the current mainstream legislation throughout Canada. The reader will become aware of these circumstances and realize the UCP legislation is breaking a long-standing agreement between labour, employers and government; an agreement that provided decades of labour stability that has contributed greatly to the economic development of Alberta and Canada.

Historical Development

Settlement - 1872

Prior to 1872 it was illegal to join or form a union in Canada and workers who engaged in strike activity were prosecuted under the *Master and Servant Act* of 1867. Eric Tucker (2004) expressed "the question of the legality of trade unions came to a head when Toronto printers were charged with criminal conspiracy" (p. 292). Let's examine what happened.

On March 25 of 1872, The Toronto Typographical Union went on strike. The main reason was to fight for the 9-hour day – a movement sweeping across the working-class in Canada. Three weeks later, leaders organized a rally of 10,000 supporters in Queen's Park. After the demonstration, the members of the strike committee were arrested and charged with criminal conspiracy (Centre for public Legal Education Alberta, 2016, The Nine Hours Movement). On April 18th, the strike committee appeared in court.

On the same day the strike committee appeared in court, Prime Minister John A. Macdonald "introduced a bill in Parliament, modeled on the British law, which freed unions from charges of conspiracy for combining to increase wages or lower hours" (Centre for public Legal Education Alberta, 2016, The Nine Hours Movement). Importantly, George Brown of the *Globe* and head of the Master Printers Association happened to be the main political opponent of Macdonald. Given the workers resentment towards Brown and the Master Printers Association, Macdonald sought to capitalize on the court drama, gain the electoral support of the workers, and pacify the labour unrest. The quick passage of

the bill saw the charges dropped against the strike committee. The bill later became the *Trade Union Act* of 1872; granting legal status for unions.

It was the collective actions across the labour movement that spurred this change. Bryan Palmer editor of the Labour/Le Travail (2015) noted, "For the first time, Canadian labour organized what might be considered the beginnings of a unified protest movement" (Background). The labour movement would continue to organize unified protests throughout Canadian history that compelled changes to labour relations regimes.

1872-1907

Although unions and their members could no longer be prosecuted for conspiracy, the *Trade Union Act* of 1872 did not enshrine the right of legal recognition of unions. Instead, a period of liberal voluntarism was ushered in. The law did not interfere with the procedures between employers and employees and "voluntary" recognition was sponsored.

During this period, as you can easily conclude, the balance of power between employers and workers changed little. First, the Canadian Encyclopedia wrote "there was no law requiring employers to recognize a union chosen by their workers" (Rouillard, Frank, Palmer & McCallum, 2015, para. 16). In fact, most employers during this time did not recognize unions and completely dismissed them. Employers were free to discriminate against union members by not hiring them and firing them if they discovered their affiliation (Fudge & Tucker, 2004, p. 2). There was often a heavy cost associated with labour organization and strike activity.

One such cost was the heavy handedness of the state intervention during strike activity. Despite the principle that the law was not to interfere in labour relations issues, employers would "ask governments to call out the troops and militia in the name of law and order, as happened on more than 30 occasions before 1914" (Rouillard, Frank, Palmer & McCallum, 2015, para. 16). Moreover, Judy Fudge and Eric Tucker (2004) stated "to protect the property and contract rights of employers…the criminal law narrowly defined the scope of permissible tactics that workers acting collectively could use to advance their interests" (p. 2). Regardless of the threat of legal jeopardy, workers continued to organize themselves into labour unions to improve their living and working conditions.

1907-1943

As unions gained membership they gained more power through the increased use of collective economic sanctioning in the form of strikes. Fudge & Tucker (2004) reported between 1899 and 1903 there were 745 strikes involving just over 120,000 workers (p. 16). This unrest worried the federal government; prompting the establishment of the Department of Labour and the enactment of a series of laws culminating in the *Industrial Disputes Investigation Act (IDIA)* of 1907 (Tucker, 2004, p. 292). This period is known as Industrial Voluntarism.

Most of the growth in unionization was in the resource, garment, textile, and steel industries as well as sectors concerning public infrastructure like railways, docks, and construction. The *IDIA* attempted to promote labour stability in these industries and sectors by "require[ing] the parties to submit

their disputes to a process of investigation and conciliation before resorting to economic sanctions" (Tucker, 2004, p. 292). The industrial voluntarism regime with the dispute resolution process was a turn toward state intervention in labour relations. This intervention helped to stabilize labour in these specific sectors.

Shortly after World War I, however, this stability began to waver. Jobs were scarce as veterans returned home. Inflation was ballooning and the cost of living increasing (Reilly, 2006, Background). Emboldened by successful international working-class movements, Canadian workers grew stronger and more militant. For example, the Winnipeg General Strike is a great demonstration of the increased organizing and action from the working-class.

On May 15th, 1919, the Winnipeg Trades and Labour Council called for a General Strike after a series of bargaining and negotiations had broken down (Reilly, 2006, Background). Within hours an estimated 30, 000 workers walked off the job in Winnipeg. At great personal risk of termination, legal jeopardy, and even deportation, workers "shut down the city's privately owned factories, shops and trains. Public employees joined them in solidarity. These included police, firemen, postal workers, telephone and telegraph operators and utilities workers" (Reilly, 2006, Winnipeg General Strike). Once again, strike leaders were arrested.

A month later, a crowd gathered in silent protest of the arrests. RCMP were dispatched to City Hall to disperse the crowd. The mounted police and special constables rammed, battered, and used high pressure fire hoses. Police lines trapped the protestors in what is referred to as "Hells Alley" due to the police violence (Bernhardt, 2019, para. 31). Later that day, the Canadian Government turned its troops against the civilians and occupied the streets under military rule (Bernhardt, 2019, para 35-37). The strike was soon over as the might of the state ensured it would be. This is a watershed moment because the workers began to expand their efforts to the political stage as well.

During the Great Depression, the rampant unemployment and deteriorating working conditions "radicalized workers and their communities" (Fudge & Tucker, 2004, p. 154). Against this backdrop of discontent, organizing efforts exploded as the working-class (and unemployed) became more willing to engage in civil disobedience. The government response to this unrest was familiar. The "repressive measures" included arrests for inciting riots, use of police force to evict unlawful assembly, police surveillance of labour activists, and deportation" (Fudge & Tucker, 2004, p. 155-156). This garnered "widespread sympathy…which manifested itself politically in the establishment and popularity of the Co-operative Commonwealth Federation (CCF)" (Fudge & Tucker, 2004, p. 159). Between 1933 and 1934, Conservative provincial governments were defeated in Nova Scotia, Ontario, Saskatchewan, and British Columbia (Fudge & Tucker, 2004, p. 159). The plight for the working-class and unemployed was gaining popular momentum both in the streets and at the election polls.

The defining moment during the Great Depression was the 'On to Ottawa Trek'. Relief camp workers (a federal relief program) were on strike but their demands went ignored. On June 2, 1935 "over a thousand men jumped an eastbound freight train to take their demands directly to Ottawa" (Landrick, n.d, 1:05). By the time the trekkers got to Regina, the group had doubled in size. The federal government moved to stop the trekkers. Prime Minister Bennett "barred the trekkers access to the railways…and refused to let them leave" (Landrock, n.d., 1:33). Bennett had brought in the mounted police and "without warning police rushed the unsuspecting crowd [of mostly civilians who were not

trekkers]…they just clubbed and teargassed" (Landrock, n.d, 2:35). Later that year, Bennett paid for his unsympathetic strategy of the unemployed and was defeated in the October election.

During another surge of industrial union growth more animosity was growing as the federal government refused to implement a national labour relations policy. The strike wave in 1937 increasingly worried provincial governments. At the same time, the formation of the Co-operative Commonwealth Federation (CCF) political party "threatened to draw working-class support away from existing parties" (Fudge & Tucker, 2004, p. 196). The strike wave of 1937 and the formation of the CCF resulted in "nearly every province to pass legislation prohibiting employer interference with trade union formation; a few, beginning with Nova Scotia in 1937, enacted statutes that required employers to bargain with unions that enjoyed majority support" (Tucker, 2004, p. 292). The problem remained; the voluntary nature of collective bargaining did not compel employers to participate in most provincial jurisdictions.

1943-Present

The events of the labour movement during the Second World War ushered in a new and long lasting era of labour relations in Canada. The strategy of "exhortation and coercion" to address labour unrest had failed (Tucker, 2004, p. 292). Organized labour had concentrated their efforts on key wartime industries such as steel, coal, and shipyards that threatened the war efforts. In addition, the growing electoral success of the CCF "threatened the Liberal's continued rule" (Fudge & Tucker, 2004, p. 263). Using wartime powers, Prime Minister Mackenzie King issued Order in Council P.C 1003. For the first time in Canadian labour relations history employers were required to recognize and bargain with trade unions. This is known as the industrial pluralism regime and is still acknowledged today.

The basic statutory framework was modelled after the U.S. Wagner Act but there are distinctly Canadian elements. Fudge and Tucker (2004) described the three distinctive elements: compelling employers to bargain with unions, compelling conciliation, and compelling grievance arbitration" (p. 273). The subsequent labour relations regime is known as the "Post War Settlement" whereby labour agreed to regulations over their activities in exchange for union recognition legislation.

The most significant element of this agreement was the prohibition on strikes and lockouts. Strikes were deemed legal only after a period of compulsory conciliation, only when a contract had expired, and only after a strike vote was conducted (Fudge & Tucker, 2004, p. 273-274). This drastically altered the purpose of unions. Prior to this new regulation, union leaders organized members to withhold their labour in order to achieve their goals. It is not an understatement to say this was a huge concession for the working-class; a concession that workers today are still expected to adhere to.

The post-war settlement was indeed a compromise and it is important to recognize the ideas that labour did not agree to. The most important proposals rejected by unions were "the respect for a union's autonomy to order its internal affairs and the rejection of compulsory interest arbitration" (Fudge & Tucker, 2004, p. 270). Unions did not then, nor now, agree to have government interference in the internal affairs of unions. Unions demanded to be treated as equal stakeholders and were insulted when this proposal insinuated workers could not democratically manage their own affairs. Similarly, the proposal of compulsory interest arbitration offended unions because it fundamentally distorts collective bargaining negotiations by removing the threat of economic sanctions. Unions deemed this unfair and asserted that the employer would not bargain in good faith knowing the dispute will be resolved through

compulsory interest arbitration. Despite making many concessions to attain the post-war settlement, unions would not agree to any proposal that did not respect the working-class as being equal participants or that totally eliminated the ability for workers to strike.

In September of 1945, 10,000 United Auto Workers went on strike at the Ford Motor Company in Windsor, Ontario. The UAW were trying to secure "two key demands: the union shop (everyone had to join the union as a condition of employment) and the union check-off (management deducted union dues from the wages of every employee and forwarded them to the union)" (Kaplan, 2011, p. 75). The strike involved innovated tactics such as having members of the power plant walk off causing a disruption of power and abandoning 1000 vehicles around the perimeter of the factory completely barricading the police from access (Kaplan, 2011, p. 77). The strikers were insistent they achieve what their sister Local in Detroit had already won.

On the other side of the table was a notoriously difficult employer: the Ford of Canada. William Kaplan (2011) explained, "The company bore considerable responsibility for the dispute. Its delay tactics were notorious, and refusing to yield in Canada on a matter already settled in the United States was bad business and bad labour relations" (p. 77). The company refused to change anything while the barricades were still in place.

Clearly at a deadlock, preparations to disband the strikers were underway. Ontario Premier George Drew and acting Prime Minister J.L. Ilsley had brought in "hundreds of OPP and RCMP" and "an army unit in nearby Chatham was placed on standby" (Kaplan, 2011, p. 76). In an effort to de-escalate tensions, Federal Labour Minister Humphrey Mitchell had "persuaded the union leaders to dismantle the barricade in return for an understanding that the government would encourage Ford to resume negotiations and, should the negotiations fail, to proceed to arbitration on any outstanding issues" (Kaplan, 2001, p. 77). The 99-day strike was over and negotiations resumed however "the main issue in dispute: union security" remained unresolved (Kaplan, 2001, p. 79).

Justice Ivan C. Rand was the appointed arbiter. After 6 days of testimony, he wrote his award known as the Rand Formula (1946). Balancing the interests of both parties, Rand had hoped "this may prove to be the beginning of cooperation" (as cited in Kaplan, 2001, p. 80). The Rand Formula provided "no one would be forced to join the union, but everybody would be equally required to help support it financially" because employees "must take the burden along with the benefit" of union activities (Kaplan, 2001, p. 81). The Rand Formula split the different interests between employers and employees and is still common labour law in Canada today.

Both PC 1003 and the Rand Formula are considered part of the post-war settlement that institutionalized peaceful management of labour relations. Peter McInnis (2002) explained, "There was an implicit quid pro quo…Business conceded unions a measure of legitimacy and citizen rights, while unions accepted managerial prerogatives and labour's place within a capitalist social order" (p. 2). Over the next several decades, securing labour stability under the post-war industrial relations system was a relative success (barring the short period during the 1960s). This labour stability was made possible through government legislating and regulating labour relations within the "quid pro quo" framework.

The UCP Abandons the Agreement

The United Conservative Party (UCP) was elected in Alberta in 2019 on the heels of the historic win by the New Democratic Party (NDP) government in 2015. Many attribute that historic win to a splitting of the votes on the right. In 2018, the UCP merged the two competing conservative parties; The Progressive Conservatives (traditional conservative party in Alberta) and the Wildrose Party (a relatively new and further right conservative party). The question arose – would the UCP become the "business as usual" conservatives or will they emerge a more radical right-wing party? The labour legislation that has been introduced very clearly answers that question. The radical right-wing conservatives are the new mainstream in Alberta politics. For the purpose of this essay, the author will provide a thorough examination of Bill 32 and explain how this legislation abandons the peace accord that has served the Alberta economy well for decades.

Bill 32

Bill 32: Restoring Balance in Alberta's Workplaces Act is an omnibus bill that makes dozens of changes to multiple pieces of legislation including the Employment Standards Code, the Labour Relations Code, the Post-Secondary Learning Act, the Public Education Collective Bargaining Act, the Public Service Employee Relations Act, the Police Officers Collective Bargaining Act, and the Public Service Employee Relations Act. Some changes are serious impositions on unions that threaten the long-term survival of worker associations. Some changes criminalize long-standing acceptable and "responsible" union activities. Some changes interfere with the Charter Rights of workers including the Freedom of Speech, Freedom of Expression, and the Freedom of Association. There are several changes that serve the purpose of delegitimizing unions among their members and among the public. These changes imply that unions are "bad actors" and play into false narratives about unions. In reality the end result will be a weaker civil society and an ongoing threat to democracy.

Let us begin with the new provision added to the Labour Relations Code – *26.1 Deduction election*. This new provision creates what is known as "the opt-in" clause. This legislation requires unions to create two separate tiers of dues: one set for "legitimate" union activities such as representation and collective bargaining negotiations, the other set for "non-legitimate" union activities such as political activities including social causes or issues, charities, or other non-governmental organizations. The first set of dues are "legitimate" and anyone working under the collective bargaining agreement would be required to pay them. The second set of dues are deemed "non-legitimate" and therefore a member must "opt-in" through some unknown mechanism (as of yet) if the union is to rightfully collect those dues. It is easy to see that whatever percentage of dues or dollar amount collected under the "non-legitimate" dues would easily be hived off – mostly as a matter of logistics. This is designed to reduce union security by attacking their capability to collect dues. No other organization in all of Alberta is told by the government what causes they can spend their money on. This is a significant intrusion on the autonomy of unions and is meant to seriously discredit unions. A clear violation of the post-war settlement.

It would be a mistake to move on from this provision without speaking to the violations of Charter Rights. The UCP claim they are protecting the rights of the individual worker by ensuring that unions cannot spend dues money without the consent of the individual. However, there is a very specific reason

this legislation is written as "opt-in" instead of "opt-out" which would seem the more logical way to accomplish the stated goal. The reason is because "opt-out" has already been decided as illegitimate at the Supreme Court of Canada (See Lavigne v. Ontario Public Service Employees Union). The UCP are playing semantics with the Charter Rights of Albertans with this twisting of words. This isn't about upholding individual rights, this is about kneecapping the unions by reducing their financial resources and ability to advocate for social causes, labour friendly legislators, and otherwise check to the powers of government and big business.

This change in dues-check off is not the only government mandated intrusion. Provisions have been added to the Labour Relations Code that requires all unions to provide each member with a copy of the financial statements. This sounds reasonable on the surface, but what is not being said is just as important. It is standard practice that unions report and review financial audits, reports and budgets at membership meetings. It is also standard practice that no member is to take the information as it is confidential. Unions do not want their financial business to end up in the hands of the employer because that could potentially damage their bargaining position and hurt the outcomes of negotiations affecting all members. This is common sense. The UCP are regulating the reporting of the private and confidential information of worker associations that will put working people's livelihoods at risk. This too is likely a violation of the Canadian Charter of Rights and Freedoms – a huge government intrusion.

Unions are democratic institutions. Union leaders are accountable to their memberships through general meetings, bylaws and constitutions, and elections. These processes are regulated through the Alberta Labour Relations Board. The UCP are trying to infer that worker associations are nefarious intuitions run by the greedy "union boss". This old and tired trope is a gross character assassination of the good working people who choose to associate in a union and is intended to delegitimize union activity.

These changes to the Labour Code are making it harder to certify unions and for workers to choose their union. The first change was part of another piece of legislation in the fall of 2019 removing the provision where unions who could prove 65% of the workforce supported unions would not be required to have a vote and instead were automatically certified. This legislation makes it harder still to certify a union by eliminating all of the timelines at the labour board and replacing them with a six month maximum. That gives employers six months to coerce, lay-off, or many other remedies to ensure the vote goes in their favour. The timelines prevented these unfair labour practices in the past and are now eliminated. What employers were advocating for this legislation? It only serves to benefit employers who use unfair labour practices. Additionally, workers are only allowed to choose a different union during the last few months of an agreement in years 3, 4 or 5 (or upon expiration of the agreement). This is called the open period. The legislation allows for the elimination of the open period effectively eliminating any chance for the workers to choose a different union if dissatisfied. Again, which unions were advocating for this change? It only serves the company unions who do not represent the best interests of the membership. This is unconstitutional because it violates the Charter Freedom to Associate.

There are so many violations of the Canadian Charter of Rights and Freedoms in this legislation. One of the ways in which the UCP are interfering with unions is by making normal activities wrongful acts. Together with *Bill 1, the Critical Infrastructure Defence Act,* Bill 32 make picketing in certain conditions a wrongful act. In Bill 1, the definition is so broad that it includes private and public infrastructure which may include sidewalks, town squares, and the sides of roads and highways. Bill 32 limits peaceful protests by making "obstructing or impeding" someone from crossing a picket line a wrongful act. Existing

legislation already covers a total blockade as unlawful, but picketers peacefully bringing awareness and education to those who are crossing a picket line has never been defined as a wrongful act. In addition, unions have a very limited ability to apply to the Labour Board for permission to picket somewhere other than where you work. If the employer moves the work location or a union wants to picket the head office of a company those activities are now restricted. The Supreme Court has already ruled to limit peaceful protests is to violate Charter Rights. It also reneges on the promises from the post-war settlement that "responsible" unionism would not be impeded and would be granted legitimacy within civil society.

Unquestionably, the UCP are not interested in maintaining the esteemed industrial relations system. The labour legislation comes from radical far-right ideology. Many of these provisions are not seen in any other jurisdiction in Canada. In fact, this is too far out of Canadian mainstream industrial relations that there will no doubt be many Charter Challenges against this government's legislation. If the UCP want to renege on the deal then they should be prepared for the consequences of labour unrest, civil disobedience, and a new class war. Labour has kept its side of the compromise this long, but how many more broken agreements before that ends?

References

Babcock, R. H. (1981, Spring). A Note on the Toronto Printers' Strike, 1872, *Labour/Le Travailleur*, 7, 127-129.

Bernhardt, D. (2019, June 21). Bloody Saturday: 1919 strike turns deadly. *CBCNews.* Retrieved from https://newsinteractives.cbc.ca/longform/bloody-saturday-and-hells-alley

Bill 32: Restoring Balance in Alberta's Workplaces Act. [2020]. Royal Assent July 29, 2020, outside of House sitting, 30th Legislature, 2nd Session (2020). Retrieved from https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_30/session_2/20200225_bill-032.pdf

Fudge, J., & Tucker, E. (2004). Labour Before the Law : The Regulation of Workers' Collective Action in Canada, 1900-1948. University of Toronto Press, Scholarly Publishing Division.

Kaplan, W. (2011). How Justice Rand Devised His Famous Formula and Forever Changed the Landscape of Canadian Labour Law. *University of New Brunswick Law Journal*, 62, 73–85.

Landrock, E. (Producer). (n.d). *On to Ottawa* [video file]. Retrieved from http://www.labourheritagecentre.ca/ottawa/

McInnis, P. S. (2002). *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943-1950.* Toronto: University of Toronto Press. Canadian Electronic Library/desLibris.

Palmer, B., Nine Hour Movement (2015). In The Canadian Encyclopedia. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/nine-hour-movement

Reilly, J., Winnipeg General Strike of 1919 (2020). In The Canadian Encyclopedia. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/winnipeg-general-strike

Rouillard, J., & Frank, D., & Palmer, B., & McCallum, T. (2015). *Working-Class History*. In The Canadian Encyclopedia. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/working-class-history

Tucker, E. M. (2004). Labour Law. *Articles & Book Chapters*. 292. http://digitalcommons.osgoode.yorku.ca/scholarly_works/292?utm_source=digitalcommons.osgoode.yorku.ca%2Fscholarly_works%2F292&utm_medium=PDF&utm_campaign=PDFCoverPages

YourAlberta. (2020, July 7). *Restoring balance in Alberta's workplaces – July 7, 2020* [Video]. YouTube. https://www.youtube.com/watch?v=jxUZJAQ6Qig&feature=youtu.be