UNA NEWS BULLETIN

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Alberta Labour Laws and UNA

Edited by Trudy Richardson from the AFL Brief by Winston Gereluk.

In 1982 Alberta hospital nurses went on strike. In 1983 the government of Alberta passed Bill 44 making hospital strikes illegal. For the next two rounds of hospital bargaining (1984-85 and 1986-87) U.N.A. hospital bargaining teams achieved negotiated settlements without strike action. In 1988 the hospital nurses engaged in illegal strike action. After the criminal contempt charges and the civil contempt hearings; after the terminations and disciplines; after the cessation of union dues; after the dust from the strike settled, the Minister of Labour tabled a new labour code to reduce our rights even further.

We have a saying around provincial office, that the Alberta government enacts new legislation to stop U.N.A. from doing what it has just finished doing.

Bill 21 (Employment Standards Code) and Bill 22 (Labour Relations Code) are presently before the Legislative Assembly. Along with the newly-enacted Bill 30 which completely re-designs the Workers' Compensation Board in favour of employers, these three pieces of legislation comprise an unprecedented and vicious attack upon the workers of Alberta in general, and upon nurses in particular.

Bills 21 and 22 reflect a fundamental misunderstanding on the part of this government as to the central aim of labour law, and especially collective bargaining law. Labour laws exist to protect the rights of working people, whether organized or unorganized. Any other objectives held by government must be either treated as secondary, or addressed in other legislation.

This central theme was best illustrated in Privy Council Order 1003 in 1944, which was intended to bring in a new era of labour relations in Canada. The intent of PC 1003 and subsequent provincial labour acts was to enshrine in law the right of workers to organize into unions and to bargain collectively for contracts governing wages and conditions of employment. Wherever this happened, the law appropriate to the individual contract of employment was supplanted by the new regime appropriate to the collective bargaining system.

This new "labour relations law" was expressly intended to encourage working people to exercise their democratic right to bargain collectively, and to prevent employers from acting to undermine that right. The pay-off for employers (very much desired in 1944) was the banning of 'wildcat' strikes, on-the-spot job action that had historically been the prevalent and only truly effective weapon for working people in their fight for better terms and conditions of employment. It was clearly intended by the government that the mass unrest and violence accompanying strikes would disappear once union recognition and job retention were no longer the dominant issues in strikes.

Yet, Alberta's labour law has never really fulfilled this fundamental intent of the new labour relations system. It has never effectively protected workers' rights to organize, bargain collectively, and negotiate contracts, much less encourage workers to exercise those rights on a day-to-day basis on the worksite. More often, the intent of successive revisions to Alberta law has been to prevent workers from engaging in some of the most essential activities, such as striking. This has been especially true of legislative changes in the last decade, beginning with the *Public Service Employee Relations Act* (Bill 41) in 1977; and extended with Bills 79 & 80 in 1980, Bill 11 in 1982, Bill 44 in 1983, Bill 60 last year, and, now Bills 21, the *Employment Standards Code* and Bill 22 the *Labour Relations Code*.

The effect of this legislative program is everywhere evident. Using 25-hour lock-outs and spin-off companies, the construction industry has been able to effectively deny the legitimate right of construction workers to be represented by unions of their choice. Even in many of those few cases where workers have managed to win certification through hard work and determination, registration has prevented them from concluding a Collective Agreement with their employer. The result has been industrial relations chaos in the industry; and, for the individual construction worker, a turning back of the clock to those dark days when workers were forced to bid against each other to bring down the price of their labour.

The Gainers' and Zeidlers' strikes in 1986 clearly illustrated the extent of the power provided by present labour laws to employers determined to de-unionize their workplaces. Under existing rules, they are allowed to engage strikebreakers to either break the union or to force concessions on the workforce by altering the terrain of the dispute from wages and benefits, to job retention and union recognition. And, of course, wherever this was the plan, the employer could count upon the police and the courts to enforce the right to bring strikebreakers across legally-established picket lines - with a predictable escalation in the level of confrontation and tension.

There is no shortage of examples of the anti-union intent inherent in the existing legislation. In 1986, for instance, the Mariposa Stores provided a prime example of how easy it is for an employer to deliberately and openly intimidate the workforce to destroy union organizing drives. In fact, this same law remains one of the major reasons why most workers in this Province lack the protection of a Collective Agreement.

Nowhere was the attitude of this government towards labour more clearly shown than in the progressive stripping of public employees' rights in Bills 41 and 44. In both cases, the Alberta government exploited its position of control, either as manager of fiscal policy or as employer, to unilaterally withdraw full collective bargaining rights from thousands of workers. It mattered not that their actions lacked any reasonable justification; the government had the power, and power was apparently all that mattered.

Simply put, Alberta legislation has hindered rather than aided workers' abilities to organize. It has made a mockery of the rights of unions to negotiate contracts, particularly first contracts, and it has fostered picket line confrontations by allowing the hiring of strikebreakers during industrial disputes. The legislation we have before us today fulfills none of the intent of the formula for industrial relations peace established by PC 1003; it contains, instead, the preconditions for heightened conflict such as that encountered in Canada in the years leading up to the 1944 law - or on 66th street in Edmonton in 1986, and in the courts in 1988.

For the Alberta government, it seems, labour law is a method of controlling labour rather than protecting it. It is intent on drafting law *over* labour, not law *for* labour. This attitude indicates an ideology which portrays labour as a problem rather than an integral and legitimate participant in the economy. In this context, labour disputes, whether strikes or lock-outs, are 'problems' - not a logical extension of the bargaining process. This wrongheaded view of labour relations seeks treatment for the symptoms of industrial relations conflict instead of the causes of the disease.

For instance, the unwillingness of government to match the inflation rate with increases in hospital funding caused the steady deterioration of nurses' working and living standards. Repeatedly frustrated in their attempts to achieve a reasonable settlement at the table, nurses chose to exercise their right to strike. To solve the 'problem' of these strikes, the government passed a law making such strikes illegal - one of the central purposes of Bill 44. The intent was to suppress the symptoms, without doing anything to cure the "disease".

In this Newsbulletin we provide you with information regarding Bills 22 and 30. We encourage you to meet with your M.L.A. as a Local and as individuals, and denounce the proposed legislation. We would also suggest you write to Mr. Ian Reid, Minister of Labour, letting him know your views on his proposed Bills.

Bargaining

Health Unit — Group of Six

by Trudy Richardson

U.N.A.'s health unit negotiating committee met May 26, 27 with the six employers represented by the Health Unit Association of Alberta.

Negotiations are down to the last remaining outstanding articles which include overtime; Named Holidays and vacation pay for part-time, temporary, and casual employees; recognition of previous experience; salaries; responsibility allowances; job postings; transportation; a letter of understanding on health and safety; and the 5-5-4 at Leduc-Strathcona.

For salaries, U.N.A.'s demand is 4% on the base R.N. rate, and a 3.75% differential between each step on the salary grid.

These negotiations are antagonistic and conflictual, with the employers refusing to give any provisions to make health unit employment attractive in a climate of nursing shortages.

Minburn-Vermilion

by David Thomson

The negotiating committee met with this employer and although many issues were settled, the major issues of health and safety, transportation and wages remain outstanding. It appears that this employer has no interest in trying to retain staff by providing a salary increase equivalent to that received in the hospitals; and has no interest in the health and safety of the current employees. In addition the employer is expecting the employees to continue to subsidize the health unit by the maintaining the current transportation article.

The Committee is reviewing its options at this time. No further meetings are planned.

Alberta West Central

by Trudy Richardson

U.N.A.'s health unit negotiating committee met May 30, 31 with the Alberta West Central Health Unit employers.

The UNA proposal package is the same as that exchanged with the H.U.A.A. employers. Due to internal management problems negotiations with AWCHU have been delayed three months and are effectively just beginning.

Much of the content of negotiations is addressing the ambiguous language of the current contract. U.N.A. is also attempting to put current employer practices into contract articles, an effort strongly resisted by the employer. As in other rounds of bargaining a big issue for UNA is the incorporation of the Rand Formula for dues deductions into the Collective Agreement.

UNA's position on wages is the cost of living (4.5%) and the employer is offering half of that.

UNA's plan is to reach settlement with H.U.A.A. employers and with Minburn-Vermilion and then effect an expeditious settlement soon thereafter at Alberta West Central.

Organizing

Jubilee Lodge Nursing Home

by David Thomson

The Labour Relations Board has ruled that the decertification vote is valid and has revoked the certificate. The employer then demanded that the Local President retract an article in the U.N.A. Newsbulletin "grey listing" the Jubilee Nursing Home which he alleges she wrote, or else be fired. She has been fired.

Two unfair Labour Practices and an application for reconsideration of the decision have been filed. The first unfair alleges discrimination for not giving the Local President the same raise everyone else received. The second is for the dismissal which is also because of discrimination on the basis of union activity.

The entire course and conduct of this case demonstrates the fallacy that the Labour Relations Board is neutral. The Labour Relations Act supposedly provides employees with the right to join a union of their own choice and employers must supposedly respect that choice. The Labour Relations Board which is responsible for enforcement of the Act, again demonstrated its bias in the conduct of the decertification hearing by allowing the employer's lawyer to act on behalf of the applicant employees. Allowing such procedures raises serious questions as to whether or not it is ever worthwhile to have any dealings with the Board. It is suffering from a severe credibility gap when it asserts that it is unbiased. Perhaps the courts may have to rule. In the meantime we urge all nurses to avoid seeking employment at the Jubilee Lodge Nursing Home.

FIGHTBACK

Lucky Seven

by Michael Mearns and Barbara Surdykowski

Debate continues on who is eligible for the seventh increment implemented in the Hospitals' Collective Agreements, April 1, 1988.

The seventh increment has been denied to two groups of Employees:

a) Employees (full-time, part-time, or casual) who have six or more years of experience and who were hired between April 1, 1987 and March 31, 1988.

b) Part-time and casual Employees who have been on Step 6 for one year or longer but who have been denied the seventh increment because they have not worked the requisite 2022.75 hours or 1829 hours toward the next increment.

If you are employed in a hospital covered by the Hospitals' Collective Agreements, have not received a seventh increment, and fall into one of the two categories, contact your president or grievance chairperson immediately. In order to receive this benefit and any retroactive pay, you must file a grievance.

Part-time employees – Don't Lose Money & Benefits You Have Earned

by Lesley Haag

Are you a part-time Employee working full-time hours?

A number of hospital employers are working part-time employees full-time hours and saving money. One employer estimated that they save $3000.00 per nurse per year when they do this.

Here's how:

1. SICK LEAVE

Sick leave credits are pro-rated on the basis of "regularly scheduled hours" not on hours worked. So the part-time nurse accumulates sick leave only on the hours specified in her letter of hire, not on the full-time hours she worked. She, therefore, has fewer paid sick days available. Not only that, the employer refuses to pay sick time when a part-time calls in sick on an extra shift. (This matter is currently before an arbitration board and should continue to be grieved).

2. NAMED HOLIDAYS

There are no days-off-in-lieu for part-timers, and therefore the employer does not need to pay for a replacement.

3. INCREMENTS

Increments, according to the A.H.A., are based on "regular hours" and in some institutions part-time Employees are not advanced to the next increment even though they have worked up to full-time hours. **We are advising all local presidents to determine how their employer calculates accumulated hours for the purpose of the next increment. Where the employer fails to calculate additional shifts towards the next increment, a grievance should be filed.**

4. VACATION

Vacation pay must be based on all hours worked. However, a part-time Employee receives a percentage on her hours worked and if she takes a number of short LOA's will lose vacation pay compared to a full-timer.

5. SHORT AND LONG TERM DISABILITY INSURANCE

The premiums paid for STDI and LTDI are established on the basis of "regularly scheduled hours" of work (letter of hire) and thus, when a part-timer becomes ill she is paid 60% of her "regular earnings" - additional shifts do not count. The employer pays lower premiums, and the part-time Employee receives 60% of less money.

A part-timer whose letter of hire is for less than 15 hours of work per week, but who works more than 15 hours regularly is eligible for no long or short term disability benefits. In this case the employer pays no premiums.

6. GROUP LIFE/ACCIDENTAL DEATH AND DISMEMBERMENT

Part-time Employees are insured on the basis of their letter of hire - additional shifts worked do not count for coverage. Eligibility is also based on the letter of hire. The employer pays lower premiums.

7. LOCAL AUTHORITIES PENSION PLAN

According to the A.H.A., the employer's contribution is based upon the regularly scheduled hours specified in the letter of hire - additional shifts do not count. Again, eligibility is based on letter of hire. Again, the employer pays less.

If you are a Part-time Employee who is working more hours than what is stated on your letter of hire, here is what you should do:

1. Write a letter to your employer asking that your letter of hire be amended to include all regularly scheduled additional hours you are working.

2. If the employer refuses to change your letter of hire, contact your Local President, Grievance Committee Chairperson or Employment Relations Officer and they will assist you in filing a grievance.

If you are working the hours, the money and benefits should be yours.

Long Term Disability Insurance – Benefit Alert

by Lesley Haag

In order to be eligible for Long Term Disability Insurance carried by the A.H.A. through Great West Life Insurance, there is a deadline for claims in their policies:

"An LTD claim form must be submitted within 12 months from your first date of disability. This 12 month deadline also applies if you are on Workers' Compensation benefits first. Therefore, if you have been on W.C.B. for more than six months, make sure you also submit an LTD claim form to Great West Life, just in case your Workers' Compensation benefits are cut off before you are fit to return to your job."

So, if you should have the ill fortune to "possibly" require LTDI, make sure your claim is registered with Great West Life Insurance. You can obtain the required forms from your employer.

Student Nurses

by Michael Mearns

The following Memorandum of Settlement was signed on April 27, 1988 to cover rates of pay of student nurses. Local #1 at the Calgary General initiated negotiations under Article 25.03 of the Collective Agreement and reached this settlement. If your hospital employs student nurses you should consider taking similar action.

Memorandum of Settlement

Subject to the United Nurses of Alberta recommending acceptance of the hourly rates and subject to the ratification process, the Calgary General Hospital agrees to pay employees employed in the clasification of Undergraduate Nurse the following rates of pay:

- Effective 1987 October 14 - $12.00 per hour
- Effective 1988 January 1 - $12.48 per hour
- Effective 1989 April 1 - $12.98 per hour

The above agreement is without prejudice to the Union's position that the rate of pay for 1987 should be retroactive to 1987, April 8, and that this resolution can be achieved through the arbitration process in accordance with Article 25.03(a) of the Collective Agreement.

The above agreement is without prejudice to the Employer's position that the rate of pay for 1987 should not be retroactive for any period of time prior to 1987 October 14. The Employer reserves the right to raise any preliminary objections should the Union attempt to arbitrate the matter of retroactive rates of pay for the period 1987 April 8 to 1987 October 14.

I've Got A Little List, I've Got a Little List

by Michael Mearns

The new Hospital Collective Agreements provides the opportunity for U.N.A. Locals and employers to update the document indicating those positions within a Nursing Unit to which the compressed work week applies. (Article 37.01 - Provincial Collective Agreement and Royal Alexandra Hospital Collective Agreement)

In the small Locals this task will be quite easy, since the Nursing Unit will encompass the whole Hospital. The task increases in difficulty as the sizes of the Locals increase. At one of the major Locals in the Province employing 800+ Nurses, for example, the document could well be several pages long. The reason for the length is that each Nursing Unit must be listed along with a listing of the total numbers of: all the full-time staff Nurse positions, all the part-time staff Nurse positions, all the full-time Assistant Head Nurse positions, all the part-time Assistant Head Nurse positions and all of the Head Nurse and instructor positions, where applicable on that Nursing Unit.

According to Article 37.01 of the Collective Agreement (Provincial Collective Agreement and Royal Alexandra Hospital Collective Agreement) any amendment to the list must be "by agreement of the parties". The parties in this instance are the employer and the U.N.A. Local concerned.

Only by establishing and maintaining the list can the Local ensure that no additions or deletions take place without its knowledge.

BILL 22

Proposed Labour Relations Code

Two summers ago Edmonton riot squads were crunching bodies at the Gainers' picket line, and city lawns sprouted "Change the Law" signs.

In the winter of 1988 Alberta nurses were hauled into court to face criminal and civil contempt charges. Faded signs poked through the snow calling for "Change the Law".

And in the Spring of 1988 Mr. Ian Reid tabled a new labour relations code which he says will take Alberta's industrial relations "into the 21st century". United Nurses of Alberta says Bill 22 will take workers in this province back to the dark ages.

What's wrong with Bill 22? Most of the following critique is from the Alberta Trade Union Lawyers' Association submission on Bill 22, and from the A.F.L. brief.

Preamble

Historically Alberta has never had a preamble to its Labour legislation. To include one in Bill 22 is a new and curious thing. A preamble is a statement in which the legislature expresses its intention in enacting a specific piece of legislation. Preambles are used by Courts to discover the intention of the legislature with respect to the operative part of the Act.

A preamble is much more than a pleasant introduction. It is a statement of purpose which has educational and interpretive value. It establishes the principles according to which every provision that follows in the Act is to be interpreted.

The Preamble to Bill 22 reads:

WHEREAS it is recognized that a mutually effective relationship between employees and employers is critical to the capacity of Albertans to prosper in the competitive world-wide market economy of which Alberta is a part; and

WHEREAS it is fitting that the worth and dignity of all Albertans be recognized by the Legislature of Alberta through legislation that encourages fair and equitable resolution of matters arising in respect of terms and conditions of employment; and

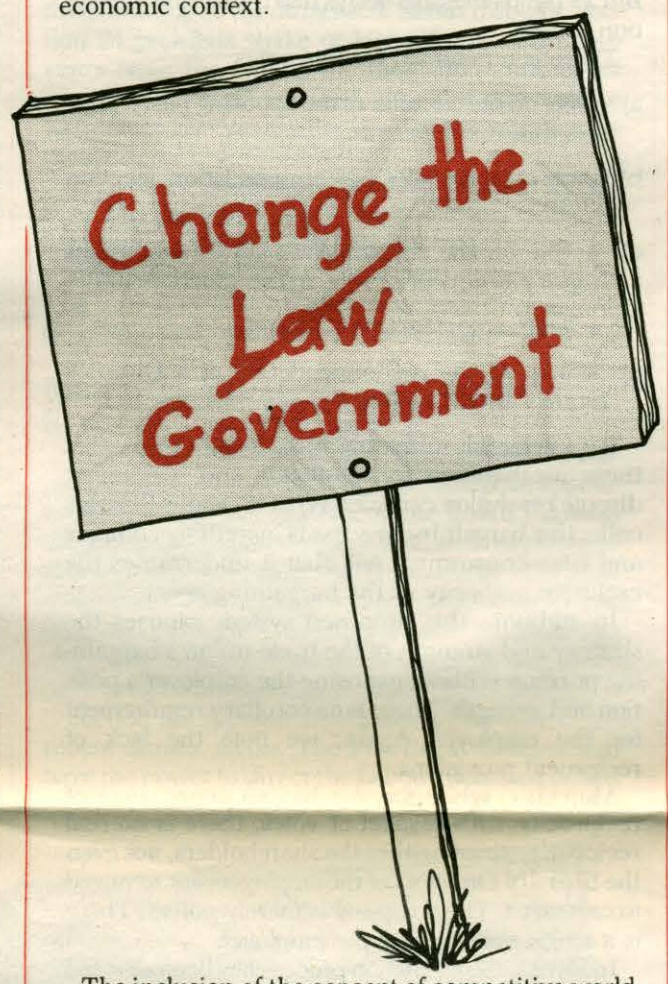
WHEREAS the employee-employer relationship is based on a common interest in the success of the employing organization, best recognized through open and honest communication between affected parties; and

WHEREAS employees and employers are best able to manage their affairs where statutory rights and responsibilities are clearly established and understood; and

WHEREAS it is recognized that legislation supportive of free collective bargaining is an appropriate mechanism through which terms and conditions of employment may be established.

In the Preamble, there exists no express official recognition of trade union legitimacy. Nowhere is the word "trade union" to be found. Industrial peace through coercion appears to be the higher public policy goal to be achieved through compulsory postponement of disputes, and indeed through legislating the dispute itself out of existence in certain circumstances. The focus of this legislation is postponement of disputes pending third party intervention, not union recognition and freedom of association. The proposed legislation does not recognize that freedom of association and establishment of collective bargaining are civil rights guaranteed by the Charter, as well as social and industrial functions which are basic and essential to the preservation of the public interest in a well-ordered society. The proposed legislation is designed not to balance competing interests but to tip the scales in favour of the employer.

The Preamble to Bill 22 is concerned with "the capacity of Albertans to prosper in the competitive world-wide market economy". Nowhere in the Preamble is there recognition of the social purposes of collective bargaining legislation as an instrument for the advancement of fundamental freedoms in the economic context.



The inclusion of the concept of competitive world markets in the Preamble explicitly isolates the higher standard of living of Canadian workers as a problem to be solved rather than as an achievement to be emulated by other nations. In short, it has no place in an Act intended to protect labour's rights.

Definitions

The purpose of labour relations legislation is to regulate relations between employers and employees and their trade union.

Perhaps no single aspect of the proposed legislation is as important in influencing the determination of rights as is the determination of who is and who is not an employer or employee. For example, these definitions are at the root of the problem with respect to spin-off employers in the construction industry. There are situations where the identity of the true employer is in question, particularly when one party has subcontracted some of its work to another party. The identity of the employee is in question in cases where it is alleged that the relationship is one of independent contractor rather than employee; for example, in the taxi industry. Any definition with respect to such fundamental ingredients of the labour relations system should be clear and unambiguous.

Further, the definition of employee should be broad so as to afford to the largest possible numbers the fundamental freedom to associate collectively for the purpose of having input into terms and conditions of employment. For example, the definition of "employee" in Manitoba and Ontario includes dependent contractors so that taxi drivers, among others, are afforded the benefits and protections of the legislation. The proposed legislation is neither clear and unambiguous, nor broad in scope.

Role of the Labour Relations Board

Section 97 permits the Chair, or Vice-Chair, to sit alone and make certain determinations. However, the Chair and Vice-Chair enjoy these enhanced powers only in relation to trade unions, and not in relation to employers. For example, the Chair, or Vice-Chair, may sit alone and decide whether a person is an employee but does not have the power to decide whether a person is an employer. The Chair or Vice-Chair can decide whether an organization of employees is a trade union but not whether an organization or association is an employers' organization. What is the rationale for the lack of reciprocity other than to, yet again, place trade unions in a disadvantaged position?

It is also of great concern that there is a significant movement away from the tri-partite character of Board decision-making. The danger inherent in such a move is that the government reserves unto itself the power to appoint the persons who will make these vital decisions. There is thus the potential for the apprehension of bias with this encroachment upon tri-partite decision-making.

Of more significance is the so-called informal procedure established by Section 10 of Bill 22. This concept was first introduced as Section 123(9) of Bill 60. However, Bill 60 at least afforded the parties the opportunity to appeal a decision arrived at under this "informal procedure" and provided that the member or members participating in the informal procedure were not eligible to hear the appeal. Under Section 10(3), the Board is permitted to simply confirm a report issued under the informal procedure as a decision of the board. To use an analogy, this would be akin to giving a judge who hears a pretrail conference the power to issue a decision without a trial. While the objective of dispute resolution is laudable, the mechanism employed is contrary to the fundamental tenants of due process of law. An appropriate method would be to follow the procedures now used by the Board. This procedure involves the appointment of a Labour Relations Board Officer who conducts an investigation and makes a report to the Board and to the parties, with the opportunity for a full hearing at the request of the parties. This procedure retains the necessary distinction between the investigation process and the adjudication process.

Section 16(2) is a particularly important change in the powers of the Board as the proposed legislation no longer permits the Board to automatically certify a trade union in the face of employer unfair labour practices. The Bill requires a representation vote on all applications for certification. The removal of the Board's jurisdiction to award certification without the vote, when there have been unfair labour practices, is an invitation to employers who resist certification drives to engage in unfair labour practices. Labour Relations boards across Canada have found that employer unfair labour practices may be so outrageous and pervasive that the true wishes of the employees to organize have been totally frustrated and would not be revealed in a vote. In those circumstances automatic certification is appropriate.

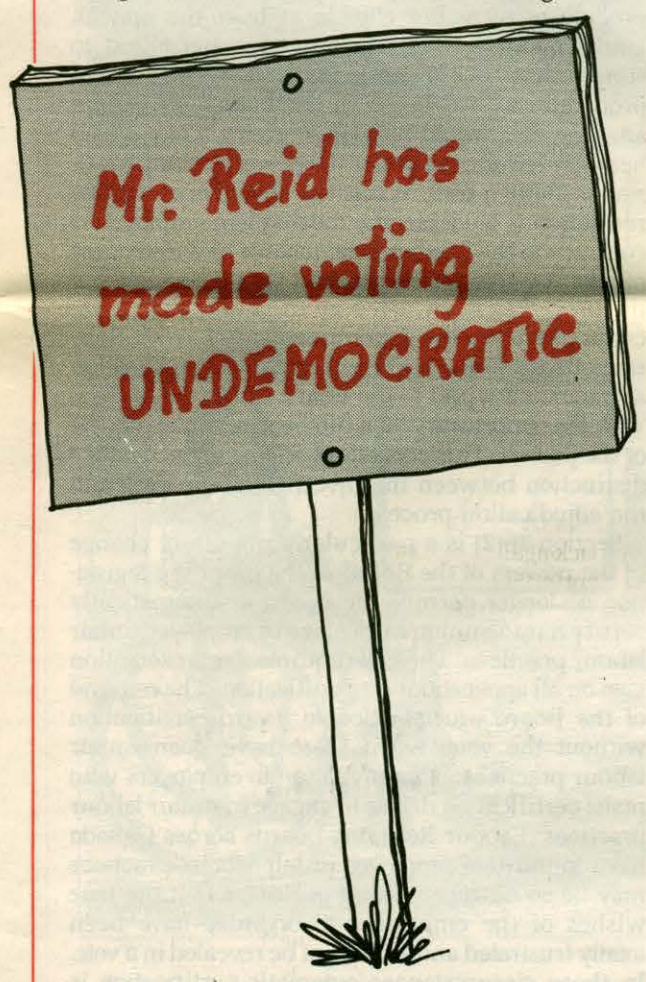
At best, the deletion of the power to automatically certify exhibits a complete failure to understand the chilling impact of employer threats and intimidation. At worst, it can only be construed as a deliberate attempt by the Government to permit employers to engage in prohibited practices with virtual immunity. Employers have obtained protection from a Mariposa-type remedy!

Religious Exemption

The new code would allow someone to opt out of paying union dues for religious reasons. The rationale for the religious exemption is that union security clauses infringe on an individual's freedom of religion. The difficulty with the proposed legislation is that it does not take into account that an employee who successfully claims the religious exemption continues to reap the advantages of the collective bargaining relationship without sharing its cost. A fair way to achieve a balance is to allow individuals to opt out of union membership but to continue paying dues to the union.

Communication & Education

Although somewhat reduced from Bill 60, this section now empowers the Minister to intervene directly in workplace labour relations by establishing multi-sector advisory councils (s.6) and roundtable conferences involving business, trade unions, academics, etc. (s.7). The "workplace councils" intended to bypass unions directly have been deleted from Bill 22. However, according to Bill 21 (s.5), they may still be brought into force *where unions exist*. Furthermore, the Minister may direct employees *and their unions* to participate, and may further, control the manner of their participation. Employers must now "make available" bulletin boards for regulations, etc. from the Minister or Board (s.5(3)) for their interventions into workplace labour relations. Any attempt to circumvent the legitimate role of unions as spokesperson for their members undermines labour's rights and is unacceptable according to the most basic principles of collective bargaining. All such provisions must be stricken from the legislation.



Representation Votes

Section 31 states that the precondition to certification is a representation vote. Formerly, once an applicant for certification had satisfied the statutory requirement for evidence of majority support and for the appropriateness of the bargaining unit, the Board would certify without a vote. The representation vote system provides employers with the opportunity for and the incentive to engage in coercive and illegal tactics. Surely a rational system is one which makes coercive tactics fruitless and eliminates the temptation to use them. It is irrational to have a system which not only provides an opportunity to use coercive and illegal tactics, but provides an incentive to do so since the powerful deterrent of automatic certification is gone.

Mediation, Enhanced Mediation, Disputes Inquiry Boards, Strikes and Lockouts, and Votes

The effect of the use of votes as proposed is twofold. First, and most importantly, it undermines the exclusive authority of the bargaining agent. The duly elected officials of the trade union are bypassed. Indeed, the essence of collective representation is destroyed. Secondly, the system set out in Bill 22 builds massive delays into the dispute resolution system.

There is a potential for five votes:

a) a vote on the last offer of the opposing party. (Section 66);

b) a vote on a mediator's recommendation, (Section 63(3));

c) a vote on the recommendation of a Disputes Inquiry Board prior to a strike. (Section 104);

d) a strike vote. (Section 72); and

e) a vote on the recommendation of a Disputes Inquiry Board during a strike. (Section 104).

It is impossible to determine the length of time that these mechanisms for mediation and bargaining dispute resolution can take. What is clear is that this collective bargaining process is incredibly complex and time-consuming, and that it undermines the exclusive authority of the bargaining agent.

In addition, this proposed system exposes the strategy and strength of the trade union's bargaining position without exposing the employer's position and strength. There is no corollary requirement for the employer. Again, we note the lack of reciprocal provisions.

Moreover, while the Act has an appearance of reciprocity with respect of votes, there is no real reciprocity since neither the shareholders, nor even the Board of Directors of the employers are required to cast votes. The company is merely polled. There is a single vote cast by the employer.

In Bill 22, the mediation process has been elevated to the level of a major, time-consuming procedure, with mandatory aspects that would be clearly unfair to the unions involved. The legislation does nothing to end the manipulation of collective bargaining procedures by employers — most notably through the use of spin-off companies, 25-hour lock-outs and the use of strikebreakers. All of these provisions were repeatedly requested by working Albertans and their organizations as fundamental to the retention of collective bargaining rights in any meaningful form.

Parties to bargaining now will have to exchange names and addresses of all members of bargaining committees "resident in Alberta". There can be only one explanation for such a provision, the notion that union organizers and negotiators from outside the Province are really "outside agitators" even "alien subversives". In reality, this provision prevents unions from utilizing personnel and resources that have been established specifically for the purpose of effective bargaining. As such, it is a totally unwarranted intrusion into the internal affairs of the bargaining agent and must be withdrawn as contrary to the basic purposes of proper labour legislation. In a slight alteration to Bill 60, parties will still have to notify each other, in advance, of the ratification procedure they intend to employ, but now only upon written request.

As in Bill 60, either party may request a mediatory (s.60,61,62(1)(a)), or the Minister may require one to be appointed. After 14 days, if no settlement, the mediator may recommend terms of settlement; if either party accepts, it can force vote on the other (s.63(3)). All strike votes must be supervised by the Board (s.65).

Now, however a new provision! No stike vote may take place until both a mediator has been appointed, *and* a cooling off period of 14 days has expired after his report (s.62(6)). To say the least, this is an unprecedented and unjustified attack on the ability of a union to manage its own strategy; it delays both a strike vote and a strike at a most crucial stage of negotiations.

Another completely unacceptable innovation invites further employer manipulation. Besides enjoying the alternative of forcing a vote on a (favourable) mediator's report, once during each dispute, the employer may ask the Board to conduct a vote on its last offer (s.66). The combined effect of these sections is to seriously weaken the union's hand at the table. The proposed Act provides for no less than *five* votes, each of which would be called at the most strategic juncture of the union's bargaining calendar to completely disrupt any strategy. The employer would be able to take a "reading" from the latest vote as to union strength and trends — there would be no matching activity on the employer's side that the union could take advatage of! By bypassing the leadership and calling for a membership vote at every crucial stage, these provisions represent a direct attack on the statutory and representative status of the certified bargaining agent. As such, they are amongst the most significant changes proposed in the Bill.

Finally, Bill 22 appears to allow for appointment of *two* Disputes Inquiry Boards in a single dispute (s.107), as well as an Emergency Tribunal.

Strikes & Lockouts

The current system of collective bargaining involving the rights of employers to lock-out and the right of employees to strike carries obvious costs and disadvantages for both parties, and for the public. However, within our socio-economic system, there is no other way to settle terms and conditions between employees and employer. The process only works when it includes incentives which push the parties towards agreement. That's why realistic and productive bargaining does not take place in the absence of the right to stirke.

The purpose of collective bargaining is to reach an Agreement. To make that process work, employers have been granted recourse to lock-out to prevent unions from dragging out negotiations endlessly while their members continue to work under the old Agreement. On the other side, employees have been granted the right to strike as a way of testing the resolve of their members against that of the employer. The balance that results from this "test of wills" is the essense of collective bargaining.

However, if the employer is allowed to escape this "test of wills", and carry on as if the resolve of union members will never be brought to bear on the issue, the whole process breaks down. The employer's incentive to reach an agreement is gone, and the union and its members are frustrated. They either accept that their democratic right to organize is an empty one — or, as has been done on a number of occasions in Alberta, they can step outside the law and force the employer to reach an agreement in this way. This has been the effect of changes made to our labour laws. They have effectively taken away the right to strike, and have promised quick punishment for anyone who insists on exercizing it. They have legislated a ban on strikes for thousands of Canadian workers without providing any viable alternative. They have thrown up countless obstacles and delays to unions in legal strike position. And, they have rendered picketing ineffective, and have allowed the hiring of scabs.

Even more interference in a union's right to strike is comtemplated by changes introduced in Bill 22. It would disallow any strike vote where there is a Collective Agreement in force (s.72(2)) (unless a bridging clause is in effect). Furthermore, if a strike did not occur within 120 days of the vote, a new vote would have to be taken (s.74(1)). Finally, a strike (or lock-out) would be deemed to be ended 2 years after

the "cooling-off period" following the mediator's report, and no more strike votes are allowed (74)2)).

Again, labour's argument for the restoration of the right to strike for *all* employees has been ignored. Yet the strong concensus of industrial relations experts is that without the right to strike, collective bargaining becomes totally dominated by the employer. The steady decline in working conditions and the standard of living for government employees and nurses provides graphic evidence of what happens when the right to strike is stripped from workers.

Scabs (Strikebreakers):

The growing tendency of employers to operate during a strike or lock-out has become a major problem, threatening to invalidate completely our whole system of collective bargaining. It is also at the root of most incidents referred to as "picket line violence". The fact that it is not addressed in Bill 22 must, therefore, be seen as one of the major weaknesses of that piece of legislation.

The purpose of a strike is to stop production. Yet, for workers in Alberta and the rest of Canada, there is probably no quicker way to get an immediate reaction from the police and the courts then to actually succeed in doing just that! If the employer requires that assistance of the courts to continue operating, he only need apply. In fact, these days the police become involved even before the courts have spoken.

In the early days of American trade unionism, employers had to go to the trouble of creating their own police forces. That is how Pinkerton's started. Not so in Canada, where the North West Mounted Police and the militia were used against striking railway workers and coal miners before the turn of the century. The practice continues today; the tax-paying public, of which the vast majority are workers, find themselves picking up the bill for employers' goon squads!.

In fact, the police themselves have become one of the major causes of violence on the picket line. It's easy to see why striking workers will react strongly to the presence of police once you understand that the obvious role of the police is to assure entry to scabs by clearing a path for them through the picket lines.

From the point of view of the workers, it is understandable why the most bitter, often-violent labour disputes in the past several years in Alberta have been the ones involving strikebreakers. Words cannot adequately express the anger and frustration that long-time employees feel when they watch scabs being brought into their workplaces, to take away their jobs, destroy their livelihoods, and impose hardships on their families — when all they are doing is exercizing their legal rights.

It only inflames the situation when this strikebreaking takes place under the protection of court injunctions, large contingents of police, and even dogs and riot squads, as occurred at the Gainers' plant in Edmonton. This legal protection for employers and scabs reflects another double standard in labour legislation; workers can't ignore a lock-out, but employers can ignore a strike.

Strikebreakers cause violence and derail the whole collective bargaining process. Despite the fact that Quebec's ban on strikebreakers reduced the length and violence of strikes without affecting historical settlement patterns, this government has refused to even consider such legislation.

Picketing – Section 81

Section 81 is perhaps the most blatantly anti-union provision of the Act. It confines picketing to persons with a so-called direct interest in the dispute; it ignores the social and economic reality of economic conflict; and it is a serious infringement on Charter guaranteed rights and freedoms. Gainers' could not persuade the Courts to uphold such a blanket prohibition of citizen participation on the picket line. The government has now taken this remarkable step.

Service of Directives – Section 85

This section imposes new rules with respect to the service of directives concerning strikes, lockouts and picketing. The proposed Section 85 gives the Labour Relations Board a broad unfettered discretion with respect to service of directives concerning strikes, lockouts and picketing. It is interesting to note that a directive is binding, not only upon the parties or/and employees within the bargaining unit, but also on any "other person to whom it is directed". A directive applies not only to the dispute giving rise to the directive but "any future strike or lockout that occurs for the same or substantially the same reason". There are no procedural safeguards for the individual who is bound in this fashion by a directive.

Most alarming is the provision that service of a directive "is deemed to be service" of a judgment or order of a court when a directive is filed with the Court. It will no longer be necessary for a person to have any actual knowledge of the order, or for that matter, of a directive of the Labour Relations Board for that person to be found in contempt. Since contempt of Court involves the freedom of the subject, the Courts have been careful to ensure that there be actual knowledge of a court order before finding persons in contempt of court. These fundamental and historical protections developed by the Courts to protect the rights of persons charged with contempt have been totally eliminated. These provisions are undoubtedly directed at the successful defenses, based on due process, raised in the nurses' civil contempt proceedings.

Statutory Termination of Strikes – Section 87 & 74

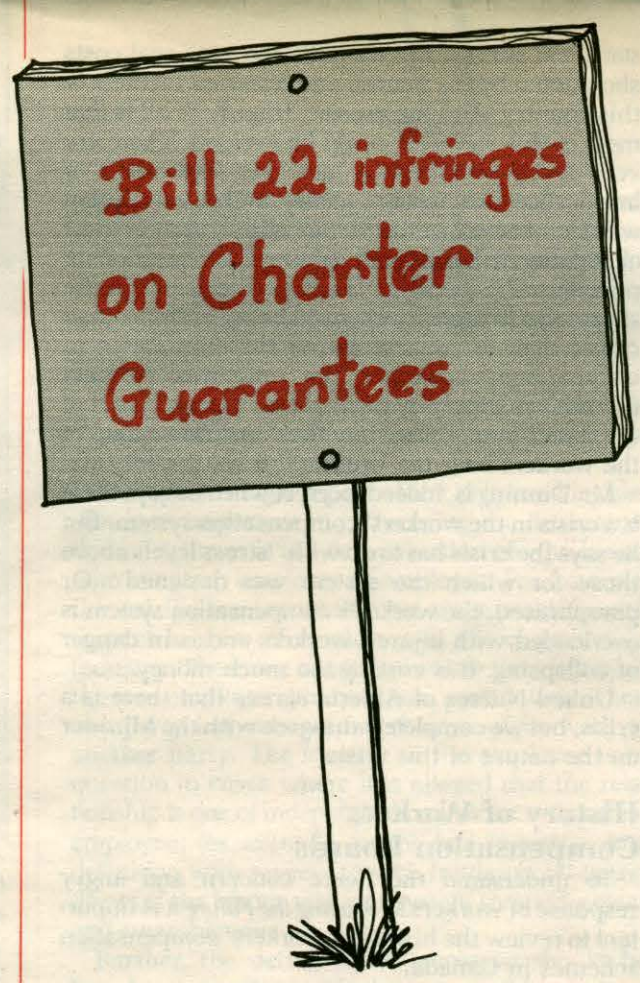
Two provisions of the Act are designed to place time limits upon the duration of labour disputes. Section 74 prohibits strike or lockout votes after two years from the end of the mediation cooling off period. Section 87, in effect, provides that a strike terminates two years after the date on which commenced.

There were no such provisions in previous legislation. The proposed provisions are clearly designed for one purpose: to crush disputes that continue for a long period of time. Only critical disputes last a long time. It is naive to believe that such disputes can be eliminated by stroke of the legislative pen.

Measures During Illegal Strikes – Sections 111, 112, & 113

Under the current legislation, an employer can suspend the check-off of dues and the union can appeal. Under the proposed legislation the Board inititates the action on its own motion. The Board may require the employer to suspend the deduction of dues upon a directive of the Board. These punitive measures may be invoked regardless of the wishes of the employer. Surely this is counter-productive and can only create an additional obstacle to settlement.

Section 113 appears to be a direct response to the recent nurses' strike. The Provinical Cabinet will have the power to direct the Labour Relations Board



to revoke trade union certification without a hearing and without any judicial safeguards. These provisions are more punitive than the existing provisions and are more punitive than those of any other Canadian jurisdiction. Surely, the offense and penalty provisions in the current legislation are appropriate and satisfactory deterrents to unlawful conduct. It is interesting that the provisions only apply to nurses and firefighters who are prohibited by law from strike action and also to other trade unions where a dispute is declared an emergency. Why are these groups targeted for particularly punitive sanctions?

Prohibited Practices

By Section 145 of the Bill, it is an offence for an employer to interfere with the representation of employees by a trade union. The potential significance of this amendment is diminished by Section 145(2)(c) which provides that an employer does not contravene Section 145(1) by reason only that the employer expresses his views so long as he does not use coercion, intimidation, threats, promises or undue influence.

This is tantamount to statutory recognition of an employer right to interfere in trade union organization. The mere expression by an employer of a preference for or against a trade union is often a key factor in the success of an organizing drive.

If the employer does use coercion, intimidatiom, threats and promises in the context of the union organizing drive, there is no effective remedy. As noted above, Labour Boards have long recognized the chilling impact of such behaviour by employers and have imposed certification without a vote as a remedy. The Labour Relations Board will no longer have that power under Bill 22. There will have to be a vote even though the Board knows that a vote will only reflect the employer's wishes.

Often employees engaged in protected trade union activity are dismissed. The employer contends that the dismissal was for bona fide business reasons. The union alleges the dismissal was motivated by "anti-union animus" or an unlawful intent. Since there are many legitimate reasons why an employee may be dismissed or laid off, a trade union often experiences insurmountable difficulty in establishing that the discharge was because of union activity. In recognition of this reality, many Canadian jurisdictions reverse the onus of proof by statute and place it on the employer. Section 262(4) of Bill 60 recommended a reverse onus clause be inserted in the legislation. Bill 22 has now removed the reverse onus clause.

The justification for the reverse onus rule is that the employer is the party with knowledge of the grounds for an employee's discharge. Therefore, the onus properly falls upon the employer to justify the dismissal. The reversal of the burden of proof would bring the prohibited practice provisions into line with the practice in dismissal cases at common-law and at arbitration, and with the unfair practices provisions in some other Canadian jurisdictions.

Bill 22, the proposed *Labour Relations Code*, contains few significant changes from its predecessor, Bill 60. It has failed to accomplish the most necessary function of a labour relations code — to foster and protect the democratic rights of workers to unionize and bargain collectively. As such it has failed to address the major concerns of the labour movement.

It has gone further. It will attempt to "solve" labour problems by further restricting labour's ability to fight back against anti-union employers intent on circumventing collective bargaining. The old and bedraggled lawn signs need to be replaced with new "Change the Bill" signs.

1988 WORKSHOP SCHEDULE

Date	District	Workshop	Location
July 5	N.D.*	Health & Safety	Valleyview
July 13	S.D.*	P.R.C. I	Lethbridge
July 14	S.D.*	Health & Safety	Lethbridge
July 20	N.C.D.*	Health & Safety	Edmonton
Aug. 16	S.C.D.*	Health & Safety	Calgary
Aug. 25	C.D.*	Health & Safety	Red Deer
Sept 8	N.D.*	Contract Interpretation	
Sept. 14	N.C.D.*	Contract Interpretation	Edmonton
Sept. 28	S.D.*	Contract Interpretation	Lethbridge
Oct. 5	S.C.D.*	Contract Interpretation	Calgary
Oct. 13	C.D.*	Grievance I	Red Deer
Nov. 2	N.D.*	Basic Unionism	
Nov. 8	N.C.D.*	Basic Unionism	Edmonton
Nov. 23	S.D.*	Basic Unionism	Lethbridge
Dec. 1	S.C.D.*	Basic Unionism	Calgary
Dec. 7	C.D.*	Basic Unionism	Red Deer

*NOTE: Please be advised that the * indicates that these workshops have been formally booked by the district.*

WCB in Crisis

Workers' Compensation is in a crisis. And it is a crisis caused by the Alberta Government's economic policy. Government policy is deliberately keeping the premiums paid by employers artificially low and thereby gradually starving the WCB fund from which benefits are paid to injured workers.

by Trudy Richardson

On March 31, 1988, Mr. Jim Dinning, Minister of Community and Occupational Health, released a report on the Alberta Workers' Compensation Board. This report, *Shaping the Future*, is intended to form the basis of sweeping changes in the WCB. On May 31, 1988, Mr. David Harrigan, Vice-President of U.N.A., presented a brief to the one-man taskforce appointed by Mr. Dinning. In the brief UNA condemned the outlined plans for reform of the WCB as being employer-dominated and unjust.

Before workers' compensation programs were created, injured, disabled, and ill workers would receive whatever financial and medical assistance was available from union benefit funds; from employer benevolence; from private insurance; from extended families; from local charity; or from legal settlements or court awards. Most of these forms of assistance, combined, did not equal lost income; nor did the amount cover medical aid and hospitalization costs (and that was before Medicare).

Even today, with workers' compensation schemes in place, the amount of compensation paid and the rehabilittation provided, do not come near to providing complete compensation. It is not an exaggeration to say that there is a human tragedy being enacted daily in our society — a tragedy marked by physical pain, emotional despair, economic loss, and death. Workers are the focus of this tragedy, for it is our lives that are twisted and ruined by occupational accidents and industrial diseases. Between 4% and 5% of Canadian workers are involved in disabling injuries each year, with at least an equal percentage suffering from industrial diseases. The amount of enforced job absence due to injury and disease far outstrips that due to strikes or lockouts, about which so much is heard.

The WCB's monetary statistics tell nothing of the stress, pain, and loss of function that is suffered by workers even while continuing to work. Premature deaths caused by workplace hazards; years of chronic unemployment for disabled persons; injured workers' suicides; domestic violence; marital discord and divorce; — these consequences of occupational accident and disease are not part of anyone's annual

> *United Nurses of Alberta agrees that there is a crisis, but we completely disagree with the Minister on the nature of this crisis.*

statistical survey. But they are the very real costs shouldered by the injured and diseased workers of this country. And the greatest tragedy of all is that most of this suffering could be avoided. There are very few jobs where a judicious application of intelligence, imagination, money, and determination would not result in the virtual elimination of most occupational hazards. It is simply a question of priorities. Frequently it is easier or cheaper in the short term to sacrifice the well-being of the worker rather than to concentrate on the elimination of occupational hazards. The employers protect themselves simply by paying their assessed part of the direct cost — they buy their insurance and let the workers bear the brunt.

Mr. Dinning is, indeed, correct when he says there is a crisis in the workers' compensation system. But he says the crisis has to do with "stress levels above those for which the system was designed". Or paraphrased, the worker's compensation system is overloaded with injured workers and is in danger of collapsing. It is costing too much money.

United Nurses of Alberta agrees that there is a crisis, but we completely disagree with the Minister on the nature of this crisis.

History of Workers' Compensation Boards

To understand the fierce concern and angry response of workers to *Shaping the Future* it is important to review the history of workers' compensation schemes in Canada.

Historically, the notion that workers' compensation is a gratuitous benefit bestowed by benevolent governments and employers, is totally wrong. It is, and will continue to be, a matter of labour — management struggle. The establishment of Workers' Compensation Boards is the result of an historic agreement between labour and management. They came about because of an increasingly-mobilized international and domestic working-class and trade union struggle to redress the alarming toll of industrial injuries and deaths occurring throughout the western world in the late nineteenth and early twentieth centuries. Benevolence was not a reality. Labour-management conflict was the ground out of which sprang the historic agreement to establish Workers' Compensation Boards.

The workers' compensation systems were born out of the utter failure of employers to address the plight of injured workers' and the abysmal failure of the business-biased legal system to provide certain and adequate judicial remedies to injured workers.

An injured worker would receive no money in compensation for the injury and the consequent loss of wages unless he took the employer to court and could prove negligence on the part of the employer. The judges had developed rules to exclude all but those cases where the employer personally or by senior management, had specifically done something negligent of which the employee was not aware at the time of the injury. But even in the few instances where there was a good case, most workers could not afford the time, cost, or risk to attempt litigation.

However, even the few successful cases posed a threat to business interests. Industrial owners and their insurance companies were threatened by the possibility of occasional, unforseeable, and large damage awards. The idea of a no-fault, employer-financed compensation system began to look good to the employers of Canada.

The workers, on their part, mobilized through their trade unions and the political parties to push for a resolution to the injustice of workplace danger.

Beginning in Ontario in 1886, provincial governments introduced statutes attempting to ameliorate the conflict around workplace injuries by improving the common law. Apparently this was in imitation of the British government's Employers' Liability Acts of 1880 and 1897. This approach to resolve the crisis predominated until 1915. Organized labour involved itself in these legislative changes, but was disenchanted by the outcomes. The Trades and Labour Congress and the railway unions agitated for a change in the process, and were a major force in the appointment in 1910 of Sir William Meredith to study the employers' liability legislation. Meredith was a former Tory party leader, and was Ontario's Chief Justice. His appointment indicates the political importance the issue of workplace injuries had gained.

After a massive process of labour-management negotiations, Meredith brought down his report in 1913. He found a broad consensus on the part of

WCB In Crisis
Continued from page 3

labour and management on many of the basic principles and major goals of a workers' compensation scheme. On other issues there was labour-management conflict. Meredith tended to side with labour on most of these contentious issues. His recommended workers' compensation scheme was based on seven major points:

1. Workers' compensation should logically be universal in coverage.
2. Employees should be entitled to compensation for injuries arising out of employment without regard to fault.
3. Compensation should cover a worker's loss of earnings because of the injury, but not pain and suffering.
4. An independent commission should administer compensation and the courts should be completely excluded.
5. Most employers should bear the burden of occupational injuries collectively by paying assessments into a central fund. Some large employers could insure themselves against the occupational injury claims of their workers.
6. Compensation should be secure, speedy, and last as long as the disability.
7. Compensation should be treated the same way for accidents and industrial diseases.

Meredith's report became the source of virtually all subsequent legislation on workers' compensation in Canada. Ontario adopted most of his report into legislation effective January 1, 1915, followed by Nova Scotia on April 23, 1915.

Similar workers' compensation schemes were introduced in Manitoba (1917), Alberta (1918), New Brunswick (1919), Saskatchewan (1929), Quebec (1931), Prince Edward Island (1949), Newfoundland (1951), the Yukon (1973), and the Northwest Territories (1977).

The creation of a no-fault, employer-financed workers' compensation system was a tremendous improvement over the previous state of affairs. One recent writer has described Workers' Compensation Boards as "Canada's first piece of social insurance". The establishment in law of workers' compensation abolished the right of injured workers to bring lawsuits against their employers, while at the same

time awarding compensation to workers without regard to fault. With only one exception in Canada, all lawsuits by employees or their dependents against employers covered by workers' compensation are prohibited. The exception is in Quebec where a worker can sue the employer if the employer caused an injory by an act which was a violation of law.

Workers' Compensation Boards thus represent decades of labour-management struggle, and are the very real result of an historic agreement between employers and employees. To alter this agreement, or to tamper with it in any way, without knowing, acknowledging, and valuing this historic agreement, and without seeking the full in-put and agreement of both parties, is to invite social upheaval and to re-ignite old fires.

On March 31, 1988, Mr. Jim Dinning, Minister of Community and Occupational Health, released *Shaping the Future*. United Nurses of Alberta denounces this report on the Alberta Workers' Compensation Board as a biased, unjust, and dishonest attempt to undermine the historic agreement between management and labour. It re-opens that agreement and attempt to re-write it to give employers what they have been unable to attain from Judge Meredith.

It is clearly another example of the government of Alberta changing legislation to give employers what they have not been able to gain through democratic, participatory, open, and fair interchanges with the workers of Alberta.

Nature of the Crisis

There is indeed a crisis in the area of occupational health and safety. But the real crisis in not that the WCB is unable to compensate injured workers. Rather, the crisis is that so little has been done to stop the escalation of occupational accidents and industrial diseases. What once seemed an adequate amount of funds in an insurance pool to cover compensable injuries, has turned into a fund unable to pay for the rising number of claims or the long-term costs of some claimants. Instead of assets we are told about the growth of unfunded liability. Employers say they can no longer afford the realistic cost of premiums. And the WCB says it cannot, therefore, afford the costs of compensation. Perhaps the experience of earlier employers has gotten dusty and unrecognizable, and present employers have no lived-memory of large court awards. Perhaps employers forget that present-day workers' compensation schemes were put in place, not only because unions wanted them, but even more because employers wanted immunity from tort liability. For employers in 1988 to whimper and whine about the cost of premiums is clear evidence that they conveniently forget that court damages and court awards would cost much more. Perhaps they think that the historic agreement allows them immunity from court charges in perpetuity, and that given such perpetuity, then can now wheedle out of their responsibility to provide no-fault occupational insurance. But the workers of Alberta have not forgotten the basis of the agreement. We know that if employers want immunity from tort liability, they are obligated to fully fund no-fault occupational insurance. If they will not fund such a workers' compensation scheme, then United Nurses of Alberta says "Call off the deal, and we'll meet you in court".

Prevention

But those are not the only two options. A third, and possibly a surperior option, is to give all Canadian WCB's, Alberta's included, jurisdiction over occupational health and safety prevention. Instead of squabbling over who pays for injured workers' claims, it is far more intelligent to apply short term monies and resources to prevention. Unfortunately, even in B.C. where 1917 legislation focused on "ensuring that compensation served the needs of prevention and that prevention efforts would predominate over time" this focus on prevention has not developed. In Alberta compensation is the mandate of the WCB, and prevention is left to the provincial Department of Community and Occupational Health. Such a division has historically allowed the WCB to deal only with compensation matters. In *Shaping the Future* the Minister of Community and Occupational Health himself all but ignores the question of prevention and deals instead with the rising costs of compensation. Surely, a concerned government cannot politically afford to ignore the growing statistics on occupational injuries, accidents, and diseases, and instead tinker with the way money flows out of the WCB.

United Nurses of Alberta calls on the provincial government to give jurisdiction over occupational health and safety prevention to the WCB, and to put legislative responsibility for such prevention on the employers of Alberta, including sufficient and adequate penalties for non-compliance.

Corporate Re-Structuring

Another general critique of *Shaping the Future* examines that process which the Minister refers to as "a no-holds barred look at the Workers' Compensation Board". United Nurses of Alberta is particularly concerned about Mr. Dinning's plans for "stakeholder input":

1. He overturned a long-standing practice whereby a public review of the WCB was conducted every four years by a select Committee of the Legislature. Instead, Mr. Dinning entrusted the task to a private management consultant firm to "facilitate an internal review process" over which he and the present WCB chairman presided. Of particular significance was the creation of a closed and private Directional Planning Team to replace the "planning and directional team" already in place, the Workers' Compensation Board itself. The WCB has representation from both business and labour. The new Directional Planning Team by-passes this kind of representation.
2. Having substituted a secretive "internal" process for Select Committee Hearings, the Minister has gone further to confine public in-put into the review process. He has announced a one-man taskforce to oversee a review process as yet undefined. The labour community had recommended a full Committee with representatives from organized labour, employers, injured workers, and the general public. Instead Mr. Dinning appointed Mr. Vern Millard as a one-man board.
3. The hearings to be conducted by Mr. Millard are not clearly set out in the Minister's press release. The terms of reference and the extent of public hearings have not been clearly mandated. Instead, it seems that hearings will be scheduled if there are requests from residents in an area. What is clear, however, is that the "public meetings (will) focus on the recommendations contained in the paper *Shaping the Future*. The other clear mandate for the public meetings is that they should not become "a forum for the expression of individual concerns". Such a statement violates the document's desire to consult with "those the WCB is intended to serve", unless, of course, injured workers are not those the WCB is intended to serve. United Nurses of Alberta takes the position that the problems, grievances, and experiences of injured workers must be the central core upon which a review of WCB takes place. These people have important information and recommendations, and must be seen as critical contributors to the review process.
4. And finally, in announcing his review process, Mr. Dinning distributed an additional hand-out entitled "Changes to the Administration of the Workers' Compensation Board". These changes were not part of the review process itself — they appeared as mere tagalongs. In truth, they are major revisions which the Minister intends to implement without any public in-put at all. "Legislation to effect these changes will be introduced during the spring session of the Legislature", Dinning said.

Legislative Intervention in Reorganization

This was perhaps the single most important announcement made by the Minister on March 31, 1988. It makes discussion of many of the other issues pointless. We can only wonder at the arrogance of a Minister who would effect such an important changes before the "stakeholder input process" he himself has instituted.

UNA is directly opposed to this legislative reorganization. It is our position that the "corporate streamlining" it proposses goes against the very spirit of the Workers' Compensation system which has evolved in Canada over the decades. In particular United Nurses of Alberta opposes:

a) the proposed separation of the administrative and appeals function of the Board. Integration of these functions is crucial to the proper cooperation of the board, as it insures that those charged with the administration of its day-to-day affairs are directly involved with the consequences of their decision-making.

b) the abandonment of a trilateral structure for the Board, with balanced representation from labour and management. This portrays a complete lack of understanding of the basis of Workers' Compensation system specifically, and of our industrial relations system generally. Over the decades, but especially since the incorporation of collective bargaining during the Second World

War, joint labour-management panels have proven to be a desireable method of solving many of the problems affecting the employment relationship. In the case of the WCB, specifically, it is crucial that this joint input be maintained, as all administrative matters, from the hiring of staff to the determination of policy have implications for the rights of workers.

c) the complete denial of any role for organized labour. This also portrays an ignorance of the foundation of the Workers' Compensation system in Canada, in which organized labour played a major role. It was in recognition of this fact, as well as the role which Provincial Federations continue to play as advocates for working people generally, that all Boards across Canada include nominees from organized labour. The Minister now intends that a reconstituted Board of Directors will be headed by two management nominees, to which will be added a senior administrator from the government bureaucracy. In Mr. Dinning's new corporate structure, representation for workers will be limited to two members on a twelve-person, part-time Board of Directors. We are given no indication how these will be chosen, or whether unions will be represented at all.

The News Release boasts that this corporate restructuring will offer a uniquely Alberta solution. This, we fear, is the whole point of the exercise; Alberta will once again be the initiator of the worst possible example of regressive, anti-union changes. In this case, the union movement is being exculded from an important and traditional role in an area directly affecting the welfare of all workers in the province.

Critique of Specifics

Shaping the Future goes on to suggest specific changes to the WCB. Rehabilitation would be the new focus rather than compensation. UNA could agree with this focus if the intent was to help injured workers. But the document clearly says that "the WCB has an obligation to reduce its long term liabilities, and thereby reduce employers' premiums. An effective rehabilitation program would be the best means of meeting this obligation". Workers of this province have every good reason to doubt the rehabilitation emphasis when the clear motivation is to same the employers money.

The rehabilitation recommendations go on to propose employability rather than employment as the goal of rehabilitation. Once again we refer to the history of the labour-management conflict. When a worker is injured for work-related reasons, workers and unions have traditionally held the employers responsible, not only for funding a no-fault wage loss insurance scheme, but also for the re-employment of injured workers. Employers, on their part, have always tried to rid themselves of the responsibility of re-employing injured workers. In fact, at recent bargaining tables UNA hospital employers have demanded that they not be responsible for the reinstatement of injured workers. To change the goal of rehabilitation from employment to employability is to give the employers what they have not been able to achieve in free collective bargaining. And in a climate of high unemployment, layoffs, and underemployment, to try to remove the employers' obligation to fund injured workers' rehabilitation to full employment is to violate, once again the historic agreement hammered out so long ago.

By rushing injured workers through the rehabilitation process; making a one-time determination of the difference between post-and pre-accident earnings; providing a wage differentiation payment; and being unconcerned about employment, WCB actually forces permanently injured workers out the door and onto CPP, UIC, or social services. This is a very curious way of recommending that WCB not become part of the social services network. To make this curious logic even more convoluted, the document goes on to recommend a plan for temporary wage-loss compensation which would allow an injured worker to earn wages at some incentive program while on temporary WCB compensation. At best, such a recommendation reflects a distrust of workers' injuries; at worst, it looks similar to the much-criticized work-for-welfare program that the Social Services Ministers of Alberta have promoted for years.

Benefits

While workers and unions recognize that there are some inequities in an assumed disability approach to compensation, we soundly reject solving the problems and inequities by substituting the assumed disability process with a wage-loss compensation approach and process.

Another recommendation is that a "one-time determination of on-going wage-loss compensation" take place and that the file then be closed. This is so preposterous a recommendation that it hardly bears comment. Indeed the ensuing paragraphs would grant the worker the right to request a review if his/her wage-loss is greater than the original determination - but, only if the greater loss is "the result of a condition which is clearly and directly related to the original injury". Volumes of health and safety literature ranging from "pre-existing conditions", to long incubation periods, to long-term toxic effects, to advancements in scientific data re industrial diseases makes this "clearly and directed related" business hopelessly impossible. To put the onus on the workers to provide such proof in order to have once-only determinations changed is to punish the victim. UNA rejects this recommendation.

Adjustments to the maximum and minimum benefits payable should be indexed regularly - to the provincial Consumer Price Index and to Collective Agreement wage and benefit increases. Provisions should also be made for an advance to injured workers. "Justice delayed is justice denied."

Funding

United Nurses fully endorses and supports the first funding recommendation that states "full funding should remain the method for financing the WCB. This funding should come solely from employers..." The rest of the qualifiers we reject"... as long as their protection from suit continues, and benefit provisions are not greatly increased". To the employers of Alberta, United Nurses says "if you want continued immunity from tort liability, then you pay the full freight of wage compensation for workers injured in the workplace". Anything less is a betrayal of an historic trade off. To break open the agreement is to risk tort liability.

Never would United Nurses of Alberta agree with "as long as benefit provisions are not greatly increased". Give us health and safety protection at work, yes; prevent accidents and illnesses, yes; then the costs would go down. But to want immunity from both tort liability and rising injury costs is to rip up the agreement and violate hard-won workers' rights.

The latest financial statement of the WCB (1986) reports that "the fnancial impact of rising costs was further compounded by the decision not to increase assessment rates for the fourth year in a row. This decision, which was taken in consultation with the Economic Planning Committee of Cabinet, was designed to recognize the economic pressures on industry and to avoid adding to their burden...As a direct outcome the operating loss for 1986 was $59.4 million".

Once again the collusion of government and business robs the workers of Alberta of their injury insurance fund. Since this Tory Government assumed office, it has made no effort to keep employer WCB assessments in line with inflation, much less with actual accident and illness statistics, or with increased insurance premiums in other sectors. Nor do these minimal assessments reflect massive increases in court settlements involving negligence in personal injury or death. Employers are protected from large court awards by WCB; now the government is making sure they will be protected from paying the true cost of this WCB insurance.

On January 1, 1988, employer WCB premiums increased 3% - the first increase since modest increases in 1983. Even so, the expected deficit for this year is over $60 million, which will raise the "unfunded laibility" to well over $400 million. So much damage has been done to the WCB Fund because of the employers' long premium holiday, that a 20% increase in rates is required to hit the break-even point.

Nowhere is *Shaping the Future* is this shameful history of low assessments identified as the cause of WCB's financial problems. United Nurses of Alberta can only believe that this is part of the Alberta government's economic policy to promote investment in the province by keeping labour costs low. We denounce the shameful collusion of government and employers against the working people of Alberta, and especially against the injured workers' of this province.

Summary

In summarizing the United Nurses of Alberta's response to *Shaping the Future* we make the following statements:

1. Employers have the major responsibility to protect the health and safety of workers.
2. Workers injured or made ill because of their employment just be fully compensated on a no-fault basis.
3. Universal WCB coverage for all workers must be mandatory.
4. Employers must pay adequate premiums to fully-fund a no-fault occuaptional insurance program in return for immunity from tort liability.
5. Employers must fund prevention, rehabilitation, vocational counselling, and re-training programs as part of the W.C.B. program.
6. Injured workers ready to return to work must be reinstated to their former positions.
7. If such reinstatement is not possible, workers must be provided with vocational re-training such that they return to full employment without loss of status or income.
8. Employers must modify jobs in order to reinstate workers able to return to work with medical restrictions.
9. Where neither 6, 7, or 8 are possible for workers, employers' premiums must be sufficient to ensure full compensation and assistance for workers to live as full a life as possible.
10. All aspects of the WCB must reflect the basic prinicples of tripartism, prevention, universality, rehabilitation and full employment.
11. The historic labour-management agreement which the WCB reflects, must be truly honoured such that no changes to the WCB be enacted without the full participation of the original historic parties.

Conclusion

United Nurses of Alberta would like to emphasize that although changes to the WCB are essential, no process of change is satisfactory unless it is democratic, participatory, open and fair. And the tripartism principle must result in a process of change which gives focal recognition to the historical reality of labour-management struggle.