

AUSTERITY and its **ALTERNATIVES**



The Tension between Public Sector Restraint and
Restructuring and the Canadian Charter of Rights

The Cases of Nova Scotia and Manitoba 2017-18

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The 1982 Charter of rights and freedoms - impact on public sector unions

- Recent decisions of the SCC were more favourable to unions
 - The court included both collective bargaining and the right to strike in freedom of association
 - 2011 BC Health and 2015 Sask. Federation of Labour
 - A difficult question remains – what exactly is collective bargaining? And What is NOT collective bargaining?



Public Sector Restraint

- Governments in Nova Scotia and Manitoba have introduced restraint legislation
- Four years of wage controls
 - 0%, 0%, .75%, 1%
 - but to comply with these recent SCC decisions “meaningful” collective bargaining is allowed on all other issues

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Public Sector Restraint

- Meaningful collective bargaining – is this possible or likely with much of the monetary value of a settlement already determined by the government?
- This is the key question I have been asked by the labour law firms



What is Collective Bargaining?

- I argue in affidavits for the Manitoba and Nova Scotia Federations of Labour that meaningful collective bargaining is almost impossible under these laws
- Collective bargaining is the core function of unions.
 - Employees join unions to improve their wages and working conditions
 - Collective bargaining is the primary vehicle of change.



What is Collective Bargaining?

- Remove collective bargaining and union members and their leaders may express disillusionment, frustration, and anger
- These feelings are likely to grow the longer is the period without collective bargaining



What is Collective Bargaining?

- Collective bargaining is an exercise of both union power and union democracy.
 - From the start of the process when a bargaining mandate is democratically created by the membership;
 - to the election of bargaining teams;
 - to the frequent caucuses during bargaining where priorities are set or reset at the bargaining table by consensus or vote;



What is Collective Bargaining?

- and finally, to the vote of the membership on the ratification of the tentative agreement,
- the union's democratic processes are an essential part of employee voice in the form of collective bargaining.



Enter Bill 148 and Bill 28 Public Sector Sustainability Act (PSSA)

- By removing the key monetary issues from the scope of bargaining, the PSSA damages these political sub-processes of collective bargaining. Under the PSSA restrictions, the union members can no longer voice their true preferences or if they do the union cannot satisfy their demands.



PSSA

- This builds frustration and cynicism on the part of union members in the institution of collective bargaining and can lead to internal union conflict including the rejection of tentative settlements. These rejected settlements will damage both the relationship between the union and its members but also between the union and management.
- In Nova Scotia, for example, the teachers have rejected 3 recommended settlements



PSSA

- Both cases are pending
 - Manitoba will be heard on May 29, 2018 – the unions are seeking an injunction – the government has not proclaimed the wage restraint Bill 28
 - The Nova Scotia government has referred their Bill 148 to the court for a constitutional opinion –no date has been set



Significance

- These cases have profound implications for the future of public sector bargaining in Canada
 - the ability of governments to suspend collective bargaining based on perceived deficit crises in the absence of any national or international economic emergency



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