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Ian D. Izard, Law Clerk

**HONOURABLE GRAHAM BRUCE
MINISTER OF SKILLS DEVELOPMENT AND LABOUR**

BILL 29 -- 2002

**HEALTH AND SOCIAL SERVICES DELIVERY
IMPROVEMENT ACT**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Part 1 – Introductory Provisions

Definitions

1 In this Act:

"Code" means the *Labour Relations Code*;

"labour relations board" means the Labour Relations Board established under the Code.

Application of *Canada Health Act*

2 The criteria referred to in section 7 of the *Canada Health Act* respecting public administration, comprehensiveness, universality, portability and accessibility prevail in the event of a conflict or an inconsistency with this Act.

Part 2 – Health Sector

Definitions

3 In this Part:

"bumping"

means the exercise of a right of one employee to displace another employee who is on the same seniority list under a collective agreement;

"collective agreement"

means a collective agreement between HEABC and a trade union or an association of trade unions in an appropriate bargaining unit;

"ESLA"

means the Employment Security and Labour Force Adjustment Agreement, issued as part of the recommendations of the Industrial Inquiry Commissioner on May 8, 1996 and included in whole or in part in one or more collective agreements between HEABC and trade unions representing employees in appropriate bargaining units, and includes any collective agreement provisions arising from ESLA, including Part 4 and Schedule 1 of the Recommendations of the Industrial Inquiry Commissioner;

"HEABC" means the Health Employers Association of British Columbia established under section 6 of the *Public Sector Employers Act*;

"health sector"

means all members of HEABC whose employees are unionized and includes their unionized employees;

"health sector employer" means an employer in the health sector;

"worksite"

means a facility, agency, centre, program, organization or location at or from which an employee is assigned to work.

Right to reorganize service delivery

4

- (1) A health sector employer has the right to reorganize the delivery of its services by transferring functions or services within a worksite or to another worksite within the region or to another health sector employer, including, but not limited to, partnerships or joint ventures with other health sector employers or subsidiaries.
- (2) A health sector employer has the right to transfer
- (a) functions or services that are to be performed or provided by another health sector employer under subsection (1) to that other health sector employer, and
 - (b) functions or services that are to be performed or provided at another worksite in the region to that other worksite.
- (3) If a function or service is transferred to another health sector employer or within or to a worksite under this section, an employee who performs that function or service may be transferred to that employer or within or to that worksite in accordance with the regulations.

Multi-worksite assignment rights**5** A health sector employer

- (a) has a right to assign an employee within or to any worksite of that employer or to a worksite operated by another health sector employer for a period not exceeding that set out in the regulations and under conditions specified in the regulations, and
- (b) must post any position pursuant to the collective agreement if the employer requires the successful candidate for that position to work on a regular ongoing basis at more than one worksite of that employer as a condition of employment in that position.

Contracting outside of the collective agreement for services**6** (1) In this section:

"acute care hospital" means a hospital or part of a hospital designated by regulation;

"designated health services professional" means

- (a) a nurse licensed under the *Nurses (Registered) Act*,
- (b) a person who is a member of a health profession designated under the *Health Professions Act* on the date on which this section comes into force, or
- (c) a person in an occupation or job classification designated by regulation;

"non-clinical services"

means services other than medical, diagnostic or therapeutic services provided by a designated health services professional to a person who is currently admitted to a bed in an inpatient unit in an acute care hospital, and includes any other services designated by regulation.

- (2) A collective agreement between HEABC and a trade union representing employees in the health sector must not contain a provision that in any manner restricts, limits or regulates the right of a health sector employer to contract outside of the collective agreement for the provision of non-clinical services.
- (3) The labour relations board or an arbitrator appointed under the Code or under a collective agreement must not declare a person who
- (a) provides services under a contract between a health sector employer and an employer that is not a health sector employer, and

(b) is an employee of the employer that is not a health sector employer

to be an employee of the health sector employer unless the employee is fully integrated with the operations and under the direct control of the health sector employer.

(4) A provision in a collective agreement requiring an employer to consult with a trade union prior to contracting outside of the collective agreement for the provision of non-clinical services is void.

(5) A collective agreement does not bind, and section 35 of the Code does not apply to, a person who contracts with a health sector employer.

(6) A health sector employer must not be treated under section 38 of the Code as one employer with any other health sector employer or a contractor.

Employment Security and Labour Force Adjustment Agreement

7

(1) A party to ESLA is not required to carry out a term of ESLA on or after the coming into force of this section.

(2) A party to a collective agreement is not required to carry out any part of a provision that is based on or derived from ESLA in the collective agreement.

(3) ESLA does not apply for the purposes of the interpretation or application of the collective agreement.

Healthcare Labour Adjustment Society

8 (1) In this section, "**HLAA**"

means The Healthcare Labour Adjustment Society of British Columbia incorporated under the *Society Act*.

(2) The minister may appoint an administrator for HLAA.

(3) The administrator appointed under subsection (2) replaces the directors of HLAA and may exercise all the rights and duties of directors under the *Society Act*.

(4) The administrator must ensure that HLAA's programs and activities operate only to the extent necessary to honour obligations to employees of health sector employers who were laid off under ESLA and to honour existing financial commitments made to health sector or other employers for reimbursement under one of HLAA's programs.

(5) The minister may direct the administrator to offer programs and activities beyond those in subsection (4).

(6) The administrator is responsible for winding up HLAA in accordance with the *Society Act*.

(7) The administrator may wind up HLAA when its obligations under subsections (4) and (5) are complete.

(8) The administrator must complete his or her duties under this section within one year from the date on which he or she is appointed.

(9) Any money remaining in HLAA at the time it is wound up must be paid into the Health Special Account referred to in the *Health Special Account Act*.

Layoff and bumping

9 For the period ending December 31, 2005, a collective agreement must not contain a provision that

(a) restricts or limits a health sector employer from laying off an employee,

(b) subject to paragraph (c), requires a health sector employer to meet conditions before giving layoff notice,

(c) requires a health sector employer to provide more than 60 days' notice of layoff to an employee directly or indirectly affected and to the trade union representing the employee, or

(d) provides an employee with bumping options other than the bumping options set out in the regulations.

Part prevails over collective agreements

10 (1) A collective agreement that conflicts or is inconsistent with this Part is void to the extent of the conflict or inconsistency.

(2) A provision of a collective agreement that

(a) requires a health sector employer to negotiate with a trade union to replace provisions of the agreement that are void as a result of subsection (1), or

(b) authorizes or requires the labour relations board, an arbitrator or any person to replace, amend or modify provisions of the agreement that are void as a result of subsection (1),

is void to the extent that the provision relates to a matter prohibited under this Part.

Part 3 – Social Services Sector

Definitions

11 In this Part:

"**accord**" means

(a) the Memorandum of Agreement Re: Equity Adjustments signed on behalf of the government, BCGEU, CUPE, HSA and HEU on June 9, 1999,

(b) the Public Sector Accord to Establish a Community Social Services Joint Benefit Trust signed on behalf of the government, CSSEA, BCGEU, CUPE, HSA and HEU on May 29, 1999, or

(c) the Public Sector Accord to Establish a Successorship Policy for the Contracted Social Services Sector Through the Government Contract Tendering Process signed on behalf of the government, BCGEU, CUPE, HSA and HEU between May 28, 1999 and June 4, 1999;

"**BCGEU**" means the British Columbia Government and Services Employees' Union;

"**collective agreement**" means a collective agreement, as defined in section 1 (1) of the *Labour Relations Code*, to which a member of CSSEA is a party;

"**CSSEA**" means the Community Social Services Employers' Association established under section 6 (1) of the *Public Sector Employers Act*;

"**CUPE**" means the Canadian Union of Public Employees or a local of the Canadian Union of Public Employees;

"**HEU**" means the Hospital Employees' Union;

"**HSA**" means the Health Sciences Association;

"**mediator's recommendations**"

means recommendations contained in The Recommendations for Settlement made by a mediator to the government, CSSEA, BCGEU, CUPE, HSA and HEU on May 28, 1999 as revised by the government, CSSEA, BCGEU, CUPE, HSA and HEU on June 9, 1999.

Accords

12 A party to an accord is not required to carry out a term of the accord.

Collective agreements

13 (1) A provision of a collective agreement that is based on or derived from an accord is void.

(2) A provision of a collective agreement that

(a) requires the government or a member of the CSSEA to negotiate with a trade union to replace provisions of the collective agreement that are void as a result of subsection (1), or

(b) authorizes or requires the labour relations board, an arbitrator or any person to replace, amend or modify provisions of the collective agreement that are void as a result of subsection (1),

is void to the extent that the provision relates to paragraph (a) or (b).

Employment security provisions

14 (1) In this section, "**employment security provisions**" means one or more provisions incorporated into a collective agreement to reflect "Section 9 -- Employment Security Language" in the mediator's recommendations relating to the collective agreement.

(2) A member of CSSEA that is a party to a collective agreement that includes employment security provisions is not required to carry out the employment security provisions.

(3) Subject to subsection (4), if an employee would be entitled to notice or payment under the employment security provisions if subsection (2) were not in force, the member of CSSEA is not required to provide more than 60 days' notice of layoff to the employee and the trade union representing the employee.

(4) An employee described in subsection (3) who has more than 10 years of regular service seniority must choose one, but not both, of the following options on receiving notice of lay off:

(a) receive a severance payment as described in subsection (5);

(b) retain the recall rights, if any, under the collective agreement.

(5) An employee choosing severance under subsection (4) (a) must receive payment in lieu of notice equal in amount to the greater of

(a) one week's pay for each 2 years of regular service seniority to a maximum of 20 weeks' pay, and

(b) the amount, if any, of payment in lieu of notice applicable to that employee under the collective agreement once subsection (2) is in force.

(6) An employee who accepts severance is deemed to have resigned his or her employment with the member of CSSEA.

(7) This section does not invalidate or make inoperative

(a) anything done under the collective agreement before this Act comes into force, or

(b) an arrangement or an agreement, except the employment security provisions, entered into before this Act comes into force.

(8) The employment security provisions do not apply for the purposes of the interpretation or application of a collective agreement in which the employment security provisions were incorporated.

Withdrawal from the trust

15 (1) In this section:

"authorization"

means an authorization under subsection (2) or (3) and includes any terms and conditions under subsection (4) to the authorization;

"member" means a member of CSSEA;

"participating employer" means a member that is a participating employer of the trust;

"trust"

means the Health Benefits Trust referred to in "Section 15 -- Health and Welfare Benefits Plans" in the mediator's recommendations.

(2) The Lieutenant Governor in Council may authorize a member not to become a participating employer if the Lieutenant Governor in Council is satisfied that equivalent benefits to those a collective agreement requires the member to provide through the trust to the employees of that member will be provided to the employees in some other manner for so long as a collective agreement requires the provision of these benefits.

(3) The Lieutenant Governor in Council may authorize a member to cease to be a participating employer if the Lieutenant Governor in Council is satisfied that

(a) the capacity of all participating employers, including the member, to meet their obligations to provide benefits to their employees will not be diminished by that member ceasing to be a participating employer,

(b) the capacity of the trust to meet its continuing obligations to provide benefits to the employees of continuing participating employers, if any, is not diminished by the member ceasing to be a participating employer, and

(c) equivalent benefits to those provided under a collective agreement through the trust to the employees of the member will continue to be provided to the employees in some other manner for so long as a collective agreement requires the provision of these benefits.

(4) The Lieutenant Governor in Council may include terms and conditions in an authorization in order to meet the criteria described in subsection (2) or (3) for giving the authorization.

(5) The trust, the member to which an authorization is given, the participating employers, all employees of the members and bargaining agents of the employees of the members are bound by an authorization.

(6) A provision in a collective agreement that requires a member to become a participating employer, or to continue to be a participating employer, is inoperative to the extent necessary to give effect to an authorization.

(7) Nothing in this section relieves a member of any obligations it has under a collective agreement to provide benefits to employees covered by the collective agreement.

Certifications

16

The government, the CSSEA and a member of the CSSEA are not required to include a provision based on the mediator's recommendations in a collective agreement with a trade union that is granted certification under the Code.

Part 4 – General

Application of the Code

17

(1) The Code and the regulations made under it apply in respect of the matters to which this Act applies, but if

there is a conflict or inconsistency between this Act and those enactments, this Act applies.

(2) Except as specifically provided in this Act, the labour relations board has exclusive jurisdiction to determine a question arising under this Act.

(3) Despite subsection (2), the labour relations board must not, before it makes a designation, decision or order, require a health sector employer or a member of CSSEA to do anything or to refrain from doing anything that the health sector employer or a member of CSSEA is doing or is not doing in the exercise or purported exercise of a right or capacity referred to in this Act.

No action for damages

18

No action for damages or compensation may be brought against the government or any person because of this Act.

Regulations

19 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

- (a) respecting the transfer of employees of health sector employers for the purposes described in section 4,
- (b) prescribing time periods and conditions for the exercise of rights under section 5, and
- (c) respecting layoffs and bumping options for the purpose of section 9.

Consequential and Related Amendments

Health Authorities Act

20 *Section 19.1 of the Health Authorities Act, R.S.B.C. 1996, c. 180, is amended*

(a) by adding the following definitions:

"certification"

means a certification issued by the labour relations board to a trade union that is certified as a bargaining agent to represent employees in the health sector;

"consolidated certification"

means a certification issued by the labour relations board to an association referred to under section 19.7 or 19.93;
, *and*

(b) in the definition of "facilities subsector" by striking out "Canadian Red Cross Society;" and substituting "Canadian Blood Services;".

21 *Section 19.4 (1) is amended*

(a) in paragraph (d) by striking out "and support." and substituting "and support – facilities subsector;", *and*

(b) by adding the following paragraph:

- (e) health services and support – communities subsector.

22 *Section 19.5 is repealed and the following substituted:*

Review of appropriate bargaining units

19.5

The minister charged with administration of the Code, on application or on the minister's own motion, and after the investigation considered necessary or advisable, may direct the labour relations board to

- (a) add a bargaining unit as an appropriate bargaining unit, or
- (b) consolidate 2 or more appropriate bargaining units.

23 Section 19.6 is repealed and the following substituted:**Review of certifications****19.6**

(1) The labour relations board may on application or must on direction by the minister charged with the administration of the Code, after the investigation considered necessary or advisable, consider whether continuation of a certification issued to a trade union is appropriate.

(2) If, acting under subsection (1), the labour relations board determines that the continuation of a certification is inappropriate, the labour relations board must cancel that certification.

(3) If a certification has been cancelled under subsection (2), the labour relations board must determine which trade union will represent the employees and may hold a representation vote for that purpose.

(4) When there is a change in trade union representation under this section, the labour relations board has the power necessary to address the consequences of the change for employees.

(5) In making a determination under subsection (2), the labour relations board must cancel a certification if the cancellation will

- (a) improve industrial stability,
- (b) enhance operational efficiency of health sector employers,
- (c) enhance a health sector employer's ability to restructure or reorganize its services or functions,
- (d) enhance a health sector employer's ability to integrate services or functions, or
- (e) create a single certification to replace multiple certifications where the employees have become or are employees of a single health sector employer.

(6) Subsection (5) (e) is repealed on February 1, 2007.

24 Sections 19.7, 19.8 and 19.911 are repealed.**25 The following section is added:****Transitional – associations of trade unions**

19.921 (1) This section applies despite section 19.7.

(2) The consolidated certifications issued by the labour relations board to an association of trade unions for each of the appropriate bargaining units referred to in section 19.4 (1) (b) and (c) are continued.

(3) The articles of association approved by the labour relations board for the associations of trade unions representing the employees in the bargaining units referred to section 19.4 (1) (b) and (c) are continued.

(4) On a date determined by the labour relations board but not more than 30 days after this section comes into force, the labour relations board must approve articles of association for the bargaining unit referred to in section

19.4 (1) (d) that are the same as the articles of association in effect for that bargaining unit under the labour relations board decision No. 573/98 and issue a consolidated certification to the association of trade unions representing employees in that bargaining unit.

(5) On a date determined by the labour relations board but not more than 30 days after this section comes into force, the labour relations board must approve articles of association for the bargaining unit referred to in section 19.4 (1) (e) that are the same as the articles of association in effect for that bargaining unit under the labour relations board decision No. 573/98 and issue a consolidated certification to the association of trade unions representing employees in that bargaining unit.

(6) Articles of association of an association of trade unions referred to in subsections (3), (4) and (5) are deemed to be a decision of the labour relations board.

(7) The consolidated certification issued by the labour relations board for an association of trade unions for the former health services and support bargaining unit on October 29, 2001 is cancelled and articles of association for that association of trade unions approved by the labour relations board for that former bargaining unit on October 26, 2001 are void 30 days after this section comes into force or on an earlier date if the labour relations board has acted under subsection (4) or (5).

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