



A THUMB ON THE SCALE

Alberta Government Interference
in Public-Sector Bargaining



Jason Foster, Bob Barnetson, and Susan Cake

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Executive Summary

In 2024, about 200,000 Alberta public-sector workers will be negotiating new contracts. This report examines the ways governments, and specifically the Government of Alberta, interfere in public-sector collective bargaining through both legislative measures and non-legislative actions. It also explores how this growing interference may impact the 2024 bargaining round in Alberta.

For decades, governments have intervened in public-sector bargaining. Legislation restricting public-sector workers' right to strike, ending labour disruptions, limiting the scope of negotiations, and imposing contract provisions has been common across jurisdictions and political party lines. In recent years, the Supreme Court of Canada, in a series of decisions, extended the *Charter of Rights and Freedoms*' protection to collective bargaining and striking. In theory, these decisions reduce the governments' ability to interfere with public-sector bargaining. In practice, however, the impact of these decisions has been both complex and limited.

The first part of the report examines the history of government interference with public-sector bargaining in Canada. Our analysis of government legislation finds that the rate of government interference in Canada has increased markedly since 2000, despite Supreme Court decisions seemingly restricting the scope for such intervention. Surprisingly, the rate of interventions has almost tripled during that period.

Further, the analysis shows strategic adaptations by governments in response to the Supreme Court's decisions *Health Services and Support – Facilities Subsector Bargaining Assn v. B.C.* (colloquially called *Health Services*) and *Saskatchewan Federation of Labour v. Saskatchewan* (colloquially called *SFL*), such as altering the type and form of legislative interference they employ. For example, one new approach is using broad bargaining mandates with which public-sector employers must comply, marking a departure from legislating specific contract provisions (a common form of intervention pre-*Health Services*).

Governments have increasingly formalized and made more sophisticated their non-legislative interference as well. Non-legislative interference consists of formal and informal actions taken outside of legislation designed to influence outcomes at bargaining tables and can include placing pressure on employers, becoming directly involved in bargaining, or threatening unions.

The evidence suggests that governments across Canada have been playing a game of cat and mouse with working people and their unions. Specifically, governments are (mostly) complying with Canada's evolving labour rights but they are doing so in the most minimal ways possible to

“Legislation restricting public-sector workers' right to strike, ending labour disruptions, limiting the scope of negotiations, and imposing contract provisions has been common across jurisdictions and political party lines.”

protect governments' ability to achieve their political and fiscal goals. They are also adopting new legislative and non-legislative tools to enhance the effectiveness of their interference.

The second part of the report examines the recent history of the Alberta government's involvement in public-sector bargaining. Alberta has actively intervened in public-sector labour relations, passing 16 pieces of legislation restricting public-sector bargaining rights since the early 1980s. In recent years, Alberta has used both legislative interventions and enhanced non-legislative tools to influence public-sector bargaining. This shift could have important impacts on the upcoming 2024 bargaining round.

In 2019, the government passed the *Public Sector Employers Act (PSEA)* which, among other things, authorizes the Minister of Finance to issue secret and binding bargaining directives to all public-sector employers, excluding municipalities and private post-secondary institutions. The introduction of the "secret mandate" — a set of directives given to employers that cannot be shared with unions or publicized in any way — was a first in Canada.

Non-legislatively, the government has focused on enhancing the role of the Provincial Bargaining and Compensation Office (PBCO, formerly called the Public Bargaining Coordination Office). Created in 2015 and tasked with supporting "the government's interests as an employer and funder," the PBCO is responsible for ensuring government mandates are implemented at over 250 public-sector bargaining tables. The PBCO was first active in bargaining during the 2017 round (under the NDP), with its involvement expanded in the 2020 round.

The report provides an in-depth analysis of the 2020 bargaining round based on interviews with union negotiators and a government official. It was not possible to interview employer negotiators as they continue to be subject to the confidentiality provisions of the *PSEA*.

This report also finds that the secret mandates bogged down negotiations and made the need for mediation more likely. The involvement of the PBCO added an element of professionalism to government interventions in the 2020 round, but its overall impact served to entrench and solidify government interference, leading to further strain in the bargaining relationship between employers and unions. Further, the PBCO's unwillingness to fully acknowledge its role as gatekeeper sowed distrust between the union negotiators and the government as a whole.

This report further finds that the 2020 round continued a decade-long trend of intensified government involvement in public-sector collective bargaining in Alberta, marked by the introduction of secret mandates and the active management of the bargaining process across the public sector by the PBCO. Coupling this trajectory with the United Conservative Party's (UCP)



The introduction of secret mandates is a novel development in the ongoing evolution of government interference, one that is likely to be replicated elsewhere.”

political agenda and confrontational approach to workers and unions led to an unprecedented degree of intervention, both legislatively and informally. The significance of this finding is two-fold. First, government interference is becoming more effective due to its enhanced legislative and non-legislative tools. Second, the introduction of secret mandates is a novel development in the ongoing evolution of government interference, one that is likely to be replicated elsewhere.

As Alberta heads into another round of public-sector bargaining in 2024, government intervention is expected to persist and evolve. Indeed, the recent introduction of Bill 5, which amends the *Public Sector Employers Act* allowing for the creation of bodies to facilitate employer coordination of bargaining across sectors, is evidence of that continued evolution.

It is also expected that the government will impose mandates designed to minimize public-sector wage increases and to standardize agreements across sectors. The report concludes by offering several options for how public-sector workers and their unions can respond to growing government interference, both at the bargaining table and through increased political pressure.

Introduction

In Canada's labour relations system, workers, through their unions, and employers are expected to negotiate in good faith to achieve a mutually acceptable collective agreement. In the private sector, the role of the government is normally limited to setting some rules regarding the bargaining process. This reflects the belief that the content of a collective agreement is best worked out between the union and the employer. While in recent years governments have enacted legislation making it more difficult to organize unions in the private sector, they have largely remained hands-off on private-sector bargaining.

Things are more complicated in the public sector. In addition to setting the rules and acting as a referee, the government is also one of the parties at the bargaining table — the employer (or primary funder of the employer). For decades, governments in Canada have taken advantage of this dual role to place their thumb on the scale, tilting the bargaining process in their favour. As a result, public-sector workers have enjoyed fewer and weaker labour rights than workers in the private sector.

Until recently, the only restriction on government interference in public-sector bargaining was what voters would tolerate. Governments (of all party stripes) periodically passed legislation restricting public-sector workers' right to strike, ending labour disruptions, limiting what could be negotiated at the table, and imposing contract provisions. Governments have also non-legislatively interfered with bargaining processes to achieve political and economic goals.

In recent years, in a series of decisions, the Supreme Court of Canada extended the *Charter of Rights and Freedoms'* protection to collective bargaining and striking. In theory, these decisions reduce the governments' ability to interfere with public-sector bargaining. In practice, however, the impact of these decisions has been both complex and limited.

This report begins by examining the past 20 years of government legislative interventions in public-sector bargaining. It analyzes how, and how often, governments have interfered with bargaining in the wake of the key Supreme Court decisions colloquially called *Health Services* and *SFL*. Subsequently, this report explores the impact of Alberta's 2019 *Public Sector Employers Act (PSEA)*, which imposed secret bargaining mandates, to reveal how mandates and other non-legislative interventions shaped the bargaining process and outcomes during the 2020 round of public-sector negotiations. The report concludes with a discussion of how the strategies of the 2020 round might play out in the upcoming 2024 round of public-sector bargaining in Alberta.

PART 1 Government Interference in Public-Sector Bargaining in Canada

In Canada’s contemporary labour relations system, unions and employers periodically negotiate the terms and conditions of employment for workers in a bargaining unit. If a union and an employer are unable to agree on the content of the collective agreement, labour law allows workers to strike (i.e., withdraw their labour) and employers to lockout (i.e., prevent workers from working) to apply economic pressure on each other. For private-sector workers, this arrangement has existed since the mid-1940s (Heron 1996).



Most public-sector workers — those employed by governments and the various agencies and organizations of government — did not gain access to collective bargaining until the late 1960s.”

Most public-sector workers — those employed by governments and the various agencies and organizations of government — did not gain access to collective bargaining until the late 1960s.¹ Governments were reluctant to extend bargaining rights to their own employees, and only did so after significant agitation by public-sector workers. Even then, governments placed limits on what could be negotiated and dramatically curtailed the right to strike, normally by substituting binding arbitration for strike/lockout.

For example, in Alberta, few public-sector workers could legally strike until 2016. That year, the then New Democratic government extended the right to strike to most public-sector workers to comply with a Supreme Court ruling (*Saskatchewan Federation of Labour v. Saskatchewan*). Today, police and firefighters in the province continue to be prohibited from striking. In the *Labour Relations Code*, the government also requires public-sector workers to maintain a minimum level of “essential services” during a work stoppage to avoid endangering the life, health, safety, or security of the public. These essential-service restrictions particularly impact health-care workers.

Governments justify restrictions on public-sector bargaining and work stoppages as necessary to ensure public access to important services (Chaykowski 2016). In effect, the collective-bargaining rights of public-sector workers are deemed less important than the public interest. Public-sector workers and labour scholars have long argued that these legislated limits also tilt the playing field further in the governments’ favour and advance their interests as employers (Weiler 1986; Swimmer and Bartkiw 2003; Rose 2016). In practice, whenever public-sector strikes do occur, both the union and the employer are careful to ensure that the health and safety of the public are not affected by ensuring enough workers remain on the job (e.g., staffing emergency rooms) or performing specific functions when needed (e.g., delivering pension cheques).

¹ Some public-sector workers at the municipal level and in public utilities have been unionized since the early 1900s.



This interference in collective bargaining is intended to limit the bargaining power of public-sector workers and, thus, their ability to secure better wages and working conditions.”

1.1 Permanent Exceptionalism

In addition to establishing a more restrictive bargaining system for public-sector workers, governments also regularly enact legislation to prevent or end public-sector strikes. Governments shape the outcome of negotiations by restricting negotiable topics, imposing contract terms, and/or establishing bargaining mandates. This interference in collective bargaining is intended to limit the bargaining power of public-sector workers and, thus, their ability to secure better wages and working conditions.

The frequency of such interference led scholars Leo Panitch and Donald Swartz to describe this pattern of government behaviour as one of “permanent exceptionalism” (Panitch and Swartz 2003). By the 1980s, governments legislatively interfering in public-sector collective bargaining had become a well-established (i.e., permanent) and central feature of public-sector labour relations. The use of these tools was justified as temporary, emergency-related, and necessary to protect the public interest (i.e., exceptional). The irony of governments consistently and repeatedly resorting to so-called exceptional measures was not lost on Panitch and Swartz:

In so far as the terminology of emergency and crisis can be made elastic enough to cover a whole era rather than specific events, months or even years, measures presented as temporary can come to characterize an entire historical period.
(1984, 152)

Permanent exceptionalism has become a defining feature of public-sector labour relations in Canada. Table 1 demonstrates that legislative interference has increased at an escalating rate over the past seven decades. While the absolute number of interventions has declined recently (likely due to fewer work stoppages), the rate of intervention has increased tenfold. There were five interventions between 2020 and 2022. This data was excluded from this analysis because COVID-19 delayed collective bargaining and work stoppages and thereby rendered data from this period noncomparable.

Table 1: Interventions and Work Stoppages by Decade

	Legal Interventions	Annual Average Interventions	Annual Average Work Stoppages	Rate of Intervention per Work Stoppage
1950s	3	0.3	209	0.0014
1960s	13	1.3	437	0.0030
1970s	41	4.1	877	0.0047
1980s	49	4.9	754	0.0065
1990s	25	2.5	394	0.0063
2000s	41	4.1	258	0.0159
2010s	34	3.4	184	0.0185

Source: Statistics Canada 2022; Panitch and Swartz 2003; and authors' calculations.



Although the courts will occasionally overturn such legislated interventions, this normally occurs years after the government has reaped the benefits of them.”

The most likely explanation for the increased rate of interventions is that, from a government perspective, these interventions are effective in achieving their goals (Smith 2020). Although the courts will occasionally overturn such legislated interventions, this normally occurs years after the government has reaped the benefits of them. Further, governments rarely face political consequences for interfering in collective bargaining, and sometimes receive a public opinion bump for prioritizing the interests of those who are potentially affected by job action, such as students, parents, patients, consumers, and taxpayers (Swimmer and Bartkiw 2003; Evans et al. 2023). There are, however, exceptions to this pattern, such as the fierce response to the Ontario government's 2022 effort to pre-empt a strike of 55,000 educational workers (Alphonso 2022). This unusual response may have been sparked more by the government's decision to invoke the *Charter of Rights and Freedoms'* notwithstanding clause than by its attempt to pre-empt a strike. Despite this recent exception, the overall pattern of success has encouraged governments to continue routinely interfering in public-sector collective bargaining (Rose 2016).

1.2 Government Interference and the Charter

For most of the last 70 years, governments have faced no legal impediment to interfering with public-sector labour relations. Early *Charter* decisions in the 1980s did not protect collective bargaining or striking from legislative interference. This jurisprudence emboldened governments to interfere.

Beginning in the 2000s, the Supreme Court's view of labour rights evolved incrementally (Fudge 2006). In 2007, the Supreme Court issued a decision (colloquially called *Health Services* after the name of the union that filed the challenge) that asserted that “freedom of association protects the capacity of



Unions face uncertain outcomes and remedies in the legal system, as well as multi-year delays in resolution.”

members of labour unions to engage in collective bargaining on workplace issues” and indicated the *Charter* protected the process of bargaining from substantial interference (*Health Services and Support – Facilities Subsector Bargaining Assn v. British Columbia* at para 2). This decision established that a meaningful process of bargaining was an aspect of freedom of association.²

In 2015, the Supreme Court issued a second decision (colloquially called *Saskatchewan Federation of Labour* or *SFL*) that extended protection from substantial interference to striking.³ *SFL* asserted that restricting strike action substantially interferes with the right to a meaningful process of collective bargaining. Justice Abella noted that labour relations are characterized by deep inequalities that render workers vulnerable and that:

a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. ... In this case, the suppression of the right to strike amounts to a substantial interference with the right to a meaningful process of collective bargaining. (*SFL v. Saskatchewan*, para 75)

Legal scholars have suggested these decisions represent modest gains for workers. Being free from substantial interference is a narrow right. This narrowness allows governments to craft legislation that both complies with the *Charter* and still interferes in labour relations in impactful ways (Dunn 2015; Etherington 2016; Braley-Rattai 2018). Nevertheless, unions have had some recent success challenging government interference, as seen in a series of court victories for unions in B.C. (*B.C. Teachers Federation v. B.C.*), Nova Scotia (*N.S. Teachers Union v. Nova Scotia*), Ontario (*OPSEU et al. v. Ontario*, *Ontario English Catholic Teachers’ Association v. Ontario*; *ATU Local 113 v. HMQRO*), and in the federal jurisdiction (*Canadian Union of Postal Workers v. Canada*).

The remedies awarded in these cases have sometimes been significant. The British Columbia Teachers’ Federation estimated its 2016 court victory in a case involving legislation that removed class sizes from collective agreements would force the government to invest \$250 to \$300 million per year into the education budget to implement the decision (Hyslop 2016). The overturning of Ontario’s Bill 124 in 2022 meant the province has had to provide health-care workers backpay of almost \$1 billion so far, with the final amount potentially being \$2.7 billion or more (D’Mello 2023). Despite these successes, unions face uncertain outcomes and remedies in the legal system, as well as multi-year delays in resolution, which may limit the utility of *Charter* challenges and unions’ interest in relying on them.

² The court case arose out of legislation passed by the government of B.C. in 2002 (*Health and Social Services Delivery Improvement Act*) which unilaterally altered existing collective agreements, prohibited bargaining over key workplace issues, and provided flexibility to health-care employees to alter working conditions regardless of the language in collective agreements. The Supreme Court ruled free and fair collective bargaining was a crucial aspect of the freedom of association under the *Charter* and thus the legislation was unconstitutional for undermining bargaining processes.

³ The case arose out of legislation passed by the government of Saskatchewan in 2008 (*Public Service Essential Services Act*) which declared most public sector workers “essential” and therefore prohibited from striking. The Supreme Court ruled the legislation to be too sweeping and afforded the employer too much power to determine “essential” work. By doing so, the Court extended *Charter* protection to the right to strike as a part of the freedom of association.

1.3 Government Responses to *Charter* Decisions

An analysis conducted by the authors of this report suggests that, rather than curtailing government interference with public-sector collective bargaining, recent *Charter* decisions have seen governments increase their rate of interference and experiment with new ways to interfere.

Table 2 sets out the rate of government intervention between 2000 and 2019.⁴ This data is broken into three periods, the boundaries of which are the key *Charter* decisions (*Health Services* in 2007 and *SFL* in 2015). As in the previous table, data from 2020 to 2022 is excluded because it is noncomparable.

Table 2: Interventions Before and After *Health Services* and *SFL*

Period	Number of Interventions	Annual Average	Annual Average Stoppages	Rate of Interference
2000-2007	34	4.3	280	0.0152
2008-2015	27	3.4	188	0.0180
2016-2019	14	3.5	170	0.0206

Source: Statistics Canada 2022; Panitch and Swartz 2003; and authors' calculations.

The number of interventions and the number of work stoppages declined significantly in each time period. The rate of government interference, however, increased by 36% across the three periods. It is puzzling to see the rate of government interference rising at the same time as the Supreme Court was narrowing the legal space in which interference can occur. One explanation for this pattern is that governments have used the clarity provided by *Health Services* and *SFL* to tailor their interventions, thereby lowering the legal risk of interfering in public-sector collective bargaining.

This explanation gains strength by examining patterns in the kinds of legislative interventions used during these periods. There are five categories of legislation:

- Back-to-Work (BTW): Legislation designed to terminate a strike/lockout or pre-empt a looming work stoppage and impose an alternative dispute resolution mechanism or a specific outcome.
- Essential Services (ES): Legislation designed to identify workers performing “essential services” and restricting their right to strike.
- Legislated Contract Provision (LCP): Legislation imposing contract provisions outside the context of a specific bargaining process and/or establishing legislated ceilings for contract provisions.
- Right-to-Strike (RTS): Legislation restricting the right to strike and/or strike activities (e.g., picketing limitations).

⁴ For methodological details, see Foster, Barnetson, and Cake 2023.

- Union Governance (UG): Legislation imposing rules affecting internal union governance, including requiring that unions seek member permission to collect or expend dues for certain activities and mandated financial reporting requirements beyond what is contained in a union's constitution or other governing documents.

Table 3 presents the frequency of each type of intervention. By far, the most preferred type of interference is BTW legislation, comprising half of all interventions, followed next by LCP with one-quarter of interventions. The prominence of these two types of interference may reflect that they address specific political problems or goals (i.e., ending a strike and/or determining specific contract language). The other types of interference affect the underlying legal architecture of labour relations (i.e., they persist over time), which would lower their frequency.

Table 3: Frequency of Intervention by Type, 2000-2022

Intervention Type	Frequency (%)
Back-to-Work	40 (50.0%)
Legislated Contract Provisions	20 (25.0%)
Essential Services	9 (11.3%)
Right-to-Strike	9 (11.3%)
Union Governance	2 (2.5%)

Source: Authors' calculations.

Table 4 breaks down the types of intervention by the period in which it was enacted. For this analysis, we did include COVID-era legislation as the focus of attention is the frequency of each type of intervention, rather than the rate.

Table 4: Interventions by Type and Period, 2000-2022

Intervention Type	Pre-Health Services (2000-2007)	Post-Health Services (2008-2015)	Post-SFL (2016-2022)
Back-to-Work	18 (52.9%)	13 (48.1%)	9 (47.4%)
Legislated Contract Provisions	10 (29.4%)	4 (14.8%)	6 (31.6%)
Essential Services	2 (5.8%)	5 (18.5%)	2 (10.5%)
Right-to-Strike	4 (11.8%)	4 (14.8%)	1 (5.3%)
Union Governance	0 (0%)	1 (3.7%)	1 (5.3%)

Source: Authors' calculations.



Governments have shifted their approach to legislating contracts since *Health Services*, moving away from imposing settlements and focusing on creating the conditions that help them obtain their desired settlements instead.”

The overall trend in Table 4 is that, when governments desire to intervene in public-sector collective bargaining, they prefer to do it via carefully created episodic interventions.⁵ The proportion of BTW legislation remained constant over all three periods. This likely reflects the fact that specific BTW legislation is required for each dispute, making its effect more time-limited. Further, while *SFL* offers some protection to workers facing BTW legislation, the protection it extends is narrow enough to permit governments to write BTW legislation that complies with the *Charter* if they include meaningful alternatives for resolving the dispute (i.e., binding arbitration).

In contrast, the proportion and number of legislated contract provision interventions declined by approximately half following *Health Services*. This decline may reflect governments needing time to consider the implications of *Health Services* for future legislated contract provisions. After *SFL*, the number of legislated contract provision interventions remained roughly stable, but its proportion of all interventions more than doubled.

There was a significant increase in the number of persistent interventions (i.e., essential services, right-to-strike, and union governance) following *Health Services* and then a dramatic tapering off following *SFL* (most of these occurring in Alberta). This pattern may reflect governments’ adjustments to the legal architecture of public-sector labour relations in response to the bar on “substantial interference” with collective bargaining and the fact that we have now entered a period of relative stability in the legal architecture.

1.4 Moving to Mandates

Before *Health Services* and *SFL*, legislation interfering with bargaining would often impose specific contract provisions. Of the 10 instances of legislated contract provisions between 2000 and 2007 (pre-*Health Services*), nine either imposed specific contract provisions or unilaterally altered existing agreements. In *Health Services*, the Supreme Court found this practice to be unconstitutional and governments instead began adapting their approach to dictating bargaining outcomes.

Among the six instances of legislated contract provision interventions between 2016 and 2022 (post-*SFL*), only two imposed specific contract provisions. In three instances, governments mandated broader bargaining outcomes (e.g., stipulating a maximum amount for wage increases) but still allowed the parties to bargain settlements overall. One other government intervention unilaterally altered previously negotiated dates and processes for wage re-openers. This pattern suggests that governments have shifted their approach to legislating contracts since *Health Services*, moving away from imposing settlements and focusing on creating the conditions that help them obtain their desired settlements instead.⁶

⁵ For details of this analysis, see Foster, Barnetson and Cake 2023.

⁶ This approach is consistent with the Supreme Court’s Meredith decision and a series of lower court decisions in 2016 upholding the same piece of legislation (*the Federal Expenditure Restraint Act*) which the Supreme Court refused to hear, that found government-imposed wage settlements could be constitutional if carefully constructed.

Unions have challenged five of the six post-*SFL* interventions to legislate contract provisions in the courts. Two have been overturned — Nova Scotia’s Bill 75, which imposed wage settlements on teachers, and Ontario’s Bill 124, which capped wage increases for hundreds of thousands of public-sector workers. One, however, has been upheld: Manitoba’s Bill 28, which set a two-year wage freeze followed by mandates for wage maximums. Two, Nova Scotia’s Bill 148 and Alberta’s Bill 9, remain unresolved at the time of writing. The sixth, Alberta’s Bill 21, has not yet been challenged in court.



Governments can interfere directly or indirectly at public-sector bargaining tables, and our analysis finds that governments have, in fact, increased their non-legislative involvement in bargaining.”

1.5 Non-Legislative Interference

Governments also have other tools available to interfere with public-sector bargaining beyond legislation. Governments can interfere directly or indirectly at public-sector bargaining tables, and our analysis finds that governments have, in fact, increased their non-legislative involvement in bargaining.

When the government is the employer (e.g., of the core civil service), government decision-makers provide mandates directly to their bargaining team and the government directly approves any resulting agreement. This is similar to the dynamic in private-sector negotiations. By contrast, when the government is a key funder of an organization, but the direct employer is a notionally independent agency, board, or commission (e.g., school boards, health authorities, and crown corporations), the government must act indirectly to achieve its bargaining goals (Ross and Savage 2013).

In the 1990s, governments often attempted to indirectly interfere in bargaining through legislative mechanisms, such as narrowing the scope of issues subject to negotiation and changing the rules surrounding collective bargaining (Reshef 2007; Swimmer and Bartkiw 2003). Beginning in the early 2000s, governments started to more actively communicate their desired outcome and attempt to compel agencies, boards, and commissions (ABCs) to comply (Thompson and Slinn 2013). Over time, these efforts have grown more sophisticated and formalized. This shift can be seen most clearly in teacher bargaining in many provinces, including Alberta, BC, and Ontario (Reshef 2007; Rose 2003; Sweetman and Slinn 2012), but eventually it extended to other sectors.

Today, Canada has a patchwork of approaches to government involvement in bargaining. Some provinces, such as Quebec and Newfoundland, have centralized bargaining with the government at the table (Peters 2014). Other provinces, particularly in Atlantic Canada, centrally bargain some issues while leaving local tables to negotiate local matters. Ontario has a complex mixture of centralized and decentralized structures (Chaykowski and Hickey 2012). Some jurisdictions have formalized a centralized process for



Expanding *Charter* protections has not reduced the rate of government interference in public-sector collective bargaining. In fact, the rate of interference has increased, to a level almost triple that of the 1990s.”

issuing mandates. For instance, since 2013, the Federal Treasury Board has a veto over tentative agreements with all agencies and Crown Corporations (Treasury Board of Canada 2008; Clark Wilson LLP 2013). Saskatchewan also has a standing cabinet committee to oversee bargaining matters (Institute for Research on Public Policy 2006).

The most developed model of centralized bargaining is found in British Columbia. Since 1993, the Public Sector Employers’ Council (PSEC) has coordinated “labour relations, total compensation planning, and human resource management across the broader public sector.” (Government of B.C. 2023a) In practice, the PSEC establishes a monetary mandate and contract term for all public-sector employers. Other government priorities, such as service-delivery improvements, are sometimes added to the mandate, which is publicly announced at the commencement of bargaining (Government of B.C. 2023b). Alberta has also had a bargaining coordination office since 2014, which will be discussed in more detail in Part 2.

1.6 A Game of Cat and Mouse

Overall, the data suggests expanding *Charter* protections has not reduced the rate of government interference in public-sector collective bargaining. In fact, the rate of interference has increased, to a level almost triple that of the 1990s. Governments have, however, slightly altered their approach to interference. Back-to-work legislation remains the most common form of interference, likely because it promptly resolves the immediate issue of a work stoppage. There is significant political upside for back-to-work legislation for governments in the short term (Swimmer and Bartkiw 2003), and any legal or financial ramifications are normally borne by future governments, as court challenges get resolved years later.

Other forms of intervention have shifted over time, suggesting governments were looking for ways to achieve their political goals (e.g., monetary restraint, no labour disruption, and weakened unions) without running afoul of the courts. When *Health Services* made imposing contract provisions more problematic, governments temporarily moved away from that strategy, turning to methods of restricting workers’ right to strike. When *SFL* ruled those actions were possibly unconstitutional, governments returned to a modified form of legislating contract provisions, issuing mandates and ceilings rather than specific outcomes.

The evidence suggests governments across Canada have been playing a game of cat and mouse with working people and their unions. Specifically, governments are (mostly) complying with Canada’s evolving labour rights but they are doing so in the most minimal ways possible to preserve their ability to achieve their political goals.

PART 2 Government Interference in Public-Sector Bargaining in Alberta

2.1 Legislative Interventions in Collective Bargaining

Alberta's boom-and-bust economy makes public-sector finance unstable and results in periodic calls for public-sector austerity. Since the early 1980s, Alberta has enacted 16 pieces of legislation (or issued orders authorized by legislation) intended to restrict bargaining rights, primarily targeting public-sector workers (refer to Table 5).

Table 5: Government of Alberta Legislative Interventions

Year	Legislation	Purpose
1982	Health Services Continuation Act	Ended a province-wide nurses strike.
1983	Labour Statutes Amendment Act	Eliminated the right to strike for health-care workers and firefighters.
1987	Construction Industry Collective Bargaining Act	Restricted bargaining rights for construction workers.
1990	Livestock Industry Diversification Act	Removed the right to unionize for workers in the livestock industry.
2001	Labour Relations Act	Temporarily suspended the right to strike for Edmonton municipal employees and paramedics.
2002	Labour Relations Act	Temporarily suspended the right to strike for teachers in 22 school districts.
2002	Education Services Settlement Act	Ended a strike by teachers and restricted negotiable matters.
2003	Labour Relations (Regional Health Authorities Restructuring) Act	Removed the right to strike for nurse practitioners and other health-care workers; restricted negotiable matters.
2008	Labour Relations Amendment Act	Removed the right to strike for paramedics.
2013	Public Services Salary Restraint Act	Threatened to impose a four-year agreement if agreement not settled by deadline.
2013	Public Sector Continuation Act	Further restricted public-sector workers' rights by expanding the definition of "strike activity."
2016	An Act to Implement a Supreme Court Ruling Governing Essential Services	Granted all public-sector workers except police and firefighters the right to strike while imposing onerous essential-service conditions.
2019	Public Sector Wage Arbitration Deferral Act	Unilaterally changed binding contracts by delaying wage re-opener deadlines.
2019	Public Sector Employers Act	Provided minister power to impose secret, binding negotiation mandates on all public-sector employers.

2020	Restoring Balance in Alberta's Workplaces Act	Required union member opt-in for collection of non-core dues; established restrictions on the right to picket and secondary picketing.
2023	Public Sector Employers Amendment Act	Expanded secret mandates to non-unionized public-sector workers and provided for the creation of employer committees and employer associations to coordinate bargaining and other human resources matters across employers.

Source: Compiled by authors.

Between 2000 and 2022, Alberta laws made up 13.5% (11) of all legislative interventions in Canada, with three of those occurring early in the United Conservative Party's (UCP) first term. This level of intervention is notable, given that Alberta has the lowest unionization rate in Canada and very low levels of strikes and lockouts.

Over the past decade, Alberta's government involvement in public-sector collective bargaining has evolved, both legislatively and non-legislatively. Notable legislative changes include the 2016 enactment of *An Act to Implement a Supreme Court Ruling Governing Essential Services* and the 2020 introduction of the *Restoring Balance in Alberta's Workplaces Act* (commonly referred to as Bill 32).

The 2016 legislation, a response to the *SFL* decision, extended the right to strike to all public-sector workers (except firefighters and police) but also required "essential" public services to remain available during strikes or lockouts. Employers and unions were required to negotiate essential service agreements (ESAs) outlining how these services would continue during a labour dispute before initiating mediation in the process of collective bargaining (a legal precursor to strikes/lockouts). Many have argued these ESAs served as an additional barrier to legal strike/lockout as they provided a secondary negotiating table where delaying tactics could be employed (Barnetson 2019).

Bill 32 placed significant restrictions on picketing during labour disputes. These restrictions included prohibiting workers from "obstructing or impeding" anyone wishing to cross a picket line and requiring unions to obtain permission from the labour relations board before engaging in secondary picketing (i.e., at locations other than the workplace). While these provisions do not impact bargaining directly, they are aimed at reducing the effectiveness of striking, which weakens unions' bargaining power.⁷

⁷ Readers interested in a fuller discussion of the implications of Bill 32 are invited to read the Parkland Institute report *Tipping the Balance: Bill 32, The Charter and the Americanization of Alberta's Labour Relations System*.

2.2 Increasing Public-Sector Bargaining Coordination

Over the past 20 years, Alberta governments have also worked, albeit unevenly, to concentrate contract expiry dates. At present, all of Alberta's major public-sector collective agreements expire within months of one another. Labour relations practitioners refer to the resulting clusters of negotiations as “rounds” of bargaining. The most recent rounds of bargaining began in 2017 and 2020 while the next round begins in 2024. One common outcome of this kind of clustered bargaining is a pattern of similar settlements, which governments see as advantageous (Traxler, Brandl, and Glassner 2008). Economic conditions and relative bargaining power determine for whom the creation of patterns is most advantageous (Roche and Gormley 2017). Unions can increase their bargaining power in clustered bargaining by coordinating bargaining efforts across tables.

A series of interviews we conducted with union officials and a government official confirms that Alberta's government has long had an interest in what happens in public-sector bargaining, in particular at the so-called “big six” tables.⁸ These tables negotiate agreements in education, health care, and the core public service, thus encompassing the majority of public-sector workers. For decades, union-side negotiators would refer to the provincial government as the “ghost at the table.” One longtime union official indicated that everyone involved in public-sector bargaining knew that the government “were never actually there but they were the ones making the decision.” This control from afar often rankled union-side negotiators because the real decision-maker was not at the table.

This perception was confirmed by the government official we interviewed. “Through most of the [Progressive Conservative] years, it was more of an ad hoc sort of approach until about the last two years before the end of their government [in 2015].” The relevant provincial department (e.g., the Department of Health in the case of health care) would engage with the employers, but there was little communication or planning between departments. According to the government official,

the minister or the deputy minister involved would swoop in at the end [of bargaining], to not only direct the deals but potentially even cut the deals. Often, they would swoop in with, we called it, the wheelbarrow of cash [to settle the agreement].

There is little evidence that the government had much involvement or took much interest in the approximately 250 smaller tables involving agencies, boards, and commissions. An even more hands-off approach was taken with municipalities, which are legally autonomous entities. Instead, the government mostly relied on the persuasive power of the patterns set at the big tables to influence outcomes at the smaller tables.

⁸ All quotations in this section come from author interviews with labour relations practitioners. This includes a government official with direct knowledge of the 2017 and 2020 bargaining rounds and nine senior union officials engaged in the 2020 round of negotiations (many of whom have participated in many rounds over the years). The unions that employ the union officials interviewed represent the majority of public-sector workers across every major domain of the public sector. The identities of these interviewees have been anonymized. These interviews were supplemented by the authors' direct knowledge and experience of public-sector bargaining in Alberta due to past and current roles as labour relations practitioners, senior-level government officials, and/or lead negotiators during the 2020 and other rounds of bargaining. Employer-side negotiators were not interviewed as they continue to be required under the PSEA to hold confidential all information related to government-imposed mandates, and thus would not be able to shed light on its impacts on the bargaining process.

This approach shifted in 2012, under Progressive Conservative Premier Alison Redford's leadership. Redford established a secretariat (called the Public Sector Resource Committee) to discuss possible coordination of public-sector bargaining. This body discussed ways the government could engage in bargaining differently but was disbanded without any action taken following Redford's resignation in 2014.

In 2015, Redford's successor, Jim Prentice, created the Public Sector Working Group, which seconded officials from different departments with bargaining experience to establish a plan to coordinate bargaining across the public sector. The 2015 mandate of the Working Group read:

The Public Sector Working Group is responsible for defining a disciplined, collaborative, long-term approach to public sector bargaining that achieves fair settlements for public sector employees that are consistent with the government's fiscal goals. The group makes accurate, objective market data available to bargaining teams in a timely fashion, including the costs of proposals and promotes labour stability and the protection of public services. (Government of Alberta 2016, 12)

In 2016, the newly elected New Democratic Party government under Rachel Notley altered the mandate of the Working Group to emphasize coordination of bargaining:

The Public Sector Working Group supports government's interests, as employer and funder, with respect to public-sector labour relations. The group prepares mandates, supports cross-sectorial coordination in bargaining and otherwise strengthens the government's overall strategic capacity with respect to negotiations, compensation research, and other strategic labour relations matters. (Government of Alberta 2017, 12)

The name of the working group was also changed to the Public Bargaining Coordination Office (PBCO) to reflect its more permanent role in negotiations. In 2022, the name was once again changed to the Provincial Bargaining and Compensation Office. Today, the function of the PBCO is laid out very clearly on the government website. It is worth citing it in full:

The Provincial Bargaining and Compensation Office (PBCO) supports the government's interests, as an employer and funder, with respect to public-sector bargaining. PBCO provides support and advice to the government and its employer partners to ensure bargaining outcomes align with the governments' fiscal, economic and public policy priorities.

Core functions and services include:

- bargaining directives and negotiations for unionized staff
- oversight and administration of non-union and out-of-scope compensation for applicable public sector agencies under the Reforms of Agencies, Boards and Commissions Compensation Act (RABCCA) and regulations
- applied economic labour analysis
- compensation research and data analytics
- strategic negotiation planning and arbitration support
- labour relations advice to internal and external partners

Bargaining directives cover all public sectors including health, post-secondary education, K-12 education, and Agencies, Boards and Commissions (ABCs). PBCO also provides support for negotiations with the Alberta Medical Association and compensation for provincial judges, justices of the peace and resident physicians. (Government of Alberta 2023b)

In essence, the PBCO represents the “government’s interests as employer and funder” and ensures all public-sector settlements “align” with government “fiscal, economic and public policy priorities.” In 2022-23, the PBCO budget was \$3 million and it employed 14 staff. (Government of Alberta 2023a)

2.3 The 2017 Bargaining Round and Aftermath

The 2017 round of negotiations was the first with active PBCO involvement. A representative of the PBCO was present at each of the big six tables. Their primary role was to be a conduit between specific employer-side bargaining committees and the government. The PBCO representative ensured employers adhered to the government’s fiscal mandate and managed employer requests to vary non-monetary aspects of the mandate.

The PBCO was not physically present at the smaller tables. It did, however, consult with those employers on mandate-related issues. The 2017 government mandate centred on a two-year wage freeze, with employers being directed to offer any necessary improvements to non-monetary language (including layoff protection) to achieve this. The option of a third-year wage re-opener was also considered a possibility. The government largely achieved its fiscal mandate in this round of bargaining.

Following the 2019 election, the Jason Kenney-led UCP government implemented several initiatives designed to further increase the government’s influence over bargaining. First, Bill 9, *The Public Sector Wage Arbitration Deferral Act*, unilaterally delayed wage re-openers which had been negotiated



Bill 9 signalled that the UCP was prepared to alter collective agreements through legislation to achieve its political goals.”

in 24 collective agreements affecting approximately 180,000 workers (Government of Alberta 2019). These agreements had established a deadline of June 30, 2019, for a negotiated agreement on the wage settlement for the last year of the agreements. Any unresolved negotiations would move to binding arbitration. Bill 9 delayed the deadline to October 31. While largely a procedural maneuver, Bill 9 signalled that the UCP was prepared to alter collective agreements through legislation to achieve its political goals. Unions were ultimately unsuccessful in seeking an injunction against the legislation, and the subsequent passage of time made any further legal challenges moot. (Bellefontaine 2019)

Later in 2019, through the omnibus Bill 21, the government enacted the *Public Sector Employers Act (PSEA)*. The *PSEA* authorized the Minister of Finance to issue secret and binding bargaining directives to all public-sector employers except municipalities and private post-secondary institutions. The *PSEA* was a response to a PBCO review of the 2017 round of negotiations, wherein the PBCO found that many employers at the small tables, particularly school boards, failed to comply with the government’s bargaining direction at the time. According to the civil servant interviewed,

The [PBCO] recommendations were basically saying we need to put a little bit more teeth [into mandates]. ... The decision was that directives would have a bit of authority or weight, ... giving it the heft of a ministerial directive.

The *PSEA* combined with the UCP’s decision to push forward with an austerity agenda early in its term were an early signal that the 2020 round of bargaining would be difficult. The government’s rhetoric going into the round suggested they would be looking for significant rollbacks.

2.4 The 2020 Bargaining Round

Bargaining in the 2020 round was scheduled to start just as COVID-19 began spreading across the world in March. Due to the immediate crisis of responding to the emerging pandemic, bargaining at most tables was delayed until the summer and fall. When bargaining did resume, it was done in the context of COVID restrictions, with most negotiations taking place virtually.

The bargaining mandates issued to public-sector employers for the 2020 bargaining round are unknown because disclosure, even after the fact, remains illegal under the *PSEA*. It is possible to infer the wage aspect of the original mandates from the 2020 opening offers, which consistently asked for wage rollbacks in the first year ranging between three and 11 percent, followed by three years of zero increases. This opening position is consistent with one of the recommendations of a government financial review panel released in the months before bargaining to reduce public-sector

compensation across the board (MacKinnon 2019). Ultimately, all the major agreements settled on modest wage increases of 3.25% to 4.25% over either three or four years, with most of the money back-end loaded. This outcome suggests the government mandate shifted during negotiations. Whether the mandates extended beyond the wage package is a point of debate that will be discussed further below.

Nature of Government Involvement

Government involvement in the 2020 round of bargaining varied based on the sector and number of workers involved. For the big six tables, the PBCO had a representative at the table throughout bargaining, just like in 2017. All respondents of our interviews reported that, at least before mediation, the PBCO representative remained silent during bargaining sessions with the union. The silence of the PBCO representatives did not, however, mean they were not exerting authority. Indeed, the PBCO was actively managing developments at the table. According to one union official, “It was very clear that the people at the table did not have the authority to negotiate certain things.” The PBCO was, at times, also actively shaping employer proposals.

The government would say to [the employer], okay, this is your proposal today and their negotiator would have like an hour sometimes to read and digest it and then have to give it to us. Sometimes it was clear that [they] had just got this and [they] didn’t even understand what was in it.

All respondents agreed that no deal could be settled without approval from the PBCO at least on matters related to the government mandate.

At the smaller tables, PBCO representatives were not physically present during negotiations but did provide direction and ensure employer compliance with the mandate. Things were different in the municipal sector. There was no direct or active involvement of the PBCO at tables with municipal employers, but efforts were made to include the largest cities in coordination. The civil servant indicated:

We had, three or four times a year, a committee where we would bring in representatives from each of the six sectors of the public sector to just to talk about issues and updates. We would invite a representative of Edmonton and Calgary to come to some of those meetings ... We are just talking about coordination and recognizing the municipalities are a player and they have a role.

Union officials in the municipal sector believe the government mandates shaped employer demands because of municipal reliance on provincial funding and the close political ties between the UCP and some city councillors.

Scope of Government Mandate

Union officials were uncertain of the scope and content of their employers' mandates or how the mandates may have shifted during bargaining. The similarity of initial opening offers suggested to them, however, that the initial monetary mandate was a wage rollback followed by several years of zero increases.

There was, however, less agreement among union officials about how detailed the mandates were or whether they included direction on non-wage items. Some respondents believed the 2020 mandate was focused on the total monetary value and left the employer to handle other matters. One respondent suggested that the mandate was monetary, but with an additional nudge.

I think what happened this round was that the government gave them specific instructions on overall compensation and on term and I think what also happened, though, is the government said, in terms of management rights and operational stuff, you propose whatever you want and we promise we will back you.

If correct, this would mean the government encouraged employers to add additional items to create a de facto "broadened mandate."

Other union officials believed the mandate went beyond setting a monetary value and delved into a wide range of issues, citing two lines of evidence to support this view. First, employers unexpectedly rejected small, cost-neutral amendments to proposals that had no material or financial impact on the employer but would advance a union objective (e.g., workplace equity). Often, the employer stated the amendment "looked too different" from other agreements. This suggested that there was an actor in the background with the desire to standardize the content of agreements and the power to compel compliance. Second, employer representatives tabled proposals in which neither party had previously expressed interest. Union officials said these proposals "[came] out of the blue" and their content sometimes seemed more in line with policy positions taken by provincial political figures rather than employer or worker interests. This was the experience of the authors as well.

One union official hypothesized that these expanded mandates were about standardizing language across agreements in a single sector.



At the big six tables where the PBCO was present, there was less need for a formal ‘mandate’ about non-monetary items because the PBCO representatives, who were in regular contact with political decision-makers, could intervene directly to affect the outcome.”

It’s not just about getting a financial mandate, but it’s also about pushing things down. So when [some] people have benefits or language that’s better than other people in the sector, it’s very clear that there’s an attempt through the government to push those individual language clauses down and to try to make an even pattern. We saw this over and over with how the employers were talking at the table of specifically targeting single benefits or single classifications of employees to try to... push their wages or benefits down.

Based on these interviews, the authors tentatively conclude that, at the big six tables where the PBCO was present, there was less need for a formal “mandate” about non-monetary items because the PBCO representatives, who were in regular contact with political decision-makers, could intervene directly to affect the outcome. In contrast, at tables without PBCO representatives present, which often entailed multiple bargaining relationships affecting similar kinds of workers, the mandates were expanded to address the government’s sectoral concerns across employers.

Role of Mediation

Every major agreement, and most smaller agreements, reached an impasse during bargaining, with settlement occurring during mediation. All union officials reported that there was basically no movement at the table until mediation began. This is suggestive of when (temporally speaking) mandates shifted. One respondent conjectured that the looming entry of a third party led employers to reconsider their positions.

[T]hey went from complete insanity to where we normally are at the beginning of bargaining... where they had one or two rollbacks. They withdrew all of the crazy stuff. ... Because I think they didn’t want to hear what [the mediator] would say, which is ‘you are crazy’.

After the first few large tables settled, negotiators at other tables developed an approximate sense of the shift in the monetary mandate and, at some of the tables, the employer presented revised wage offers reflecting the larger settlements. Nevertheless, employers did not remove many other concessionary proposals before mediation.

At mediation, the content of the mandates was communicated more explicitly. At many tables, the mediator communicated, directly or indirectly, that certain items were subject to the mandate. At tables with PBCO representation, it was the PBCO representative who communicated the mandate. According to one union official, “In mediation, [the PBCO

representative] was actually way more candid about it. ... [They] made it very clear what was there under [the direction of] the Minister of Finance.”

Mediation also revealed the extent of government engagement in the process. Mediators found different ways to communicate that on monetary items the government was in control.

When we got into mediation, [the mediator] said to me ‘why don’t we do this at two different tables? So, why don’t we have one table where we talk about the operational stuff and a second table where we talk about money and I won’t even bother inviting [the employer] to that table... It’ll just be you and me and [PBCO representative], you and your bargaining team’.

The union official indicated the mediator proposed this arrangement because, when it came to monetary matters, the employer has “no say in the matter at all, they have no input.”

One union official reported that the mediation process included phone calls with the head of the PBCO, who had a direct line to the relevant ministers. Another union official, who was at one of the smaller tables, reported being present as the mediator made a phone call to “a mystery man” to seek approval for a proposal. While this respondent could not identify the person whom the mediator phoned, the nature of the conversation convinced the respondent that the “mystery man” was not someone from their organization. These examples suggest that the PBCO staff appear to have been actively engaged in directing the final settlements at most bargaining tables, even during mediation.

Role of COVID-19

The COVID-19 pandemic affected the outcomes of the 2020 round by altering both the process and the broader political context, so much so that it compelled the government to walk back its original mandate. The start of negotiations was delayed by six to 12 months and took place virtually. Virtual bargaining slowed down the process and required negotiators to adopt new strategies and tactics (Foster 2023). The destabilizing nature of COVID-19 had three main effects on bargaining.

- Public opinion regarding public-sector workers — particularly teachers and health-care workers — became quite positive due to their hard work in dangerous conditions. Trying to force wage rollbacks and other concessions on these “heroes” was politically untenable and likely contributed to the eventual shift in the government mandate.

- The delay in the negotiations pushed public conflict (e.g., strikes and lockouts) too close to the 2023 election. Governments typically seek to do unpopular things early in a mandate (König and Wenzelburger 2017). With some negotiations pushing into late 2021, the political risks of a confrontation with public-sector unions may have made government leaders nervous. This hesitancy may have been heightened by internal leadership challenges facing then-Premier Jason Kenney, challenges that ultimately forced his resignation in mid-2022.
- Rebounding oil prices in 2021 added substantial revenue to the government’s coffers. This fundamentally changed the economic context in which bargaining was taking place and undermined the government’s argument for public-sector austerity.

One union official put it this way:

They were running out of time and they were running out of credibility to leverage with the public, especially in light of COVID and particularly [for certain sectors such as health care]. Those workers were seen as heroes by the public and yet the employers are demonizing them. ... [Also] I think the government realized that they were getting into not the red zone but the orange zone in terms of their mandate and they weren’t going to be able to pull this one off and it would have led to probably strikes leading up to an election. ... I think they lost the appetite for that fight.

“While negotiators rarely share the full extent of their mandate, the PSEA curtailed the ability of employer-side negotiators to reveal elements of their mandate to advance bargaining or achieve a strategic goal.”

2.5 Effects of Government Intervention on Bargaining

Previous research has established that ongoing government intervention in bargaining “can gradually transform the process of collective bargaining and with it the union-employer bargaining relationship” (Reshef 2007, 691). Specifically, it damages the relationships between the union and the employer by increasing conflict at the table and reducing trust between the parties (Rose 2016; Swimmer and Bartkiw 2003; Sweetman and Slinn 2012). An open question is how the specific forms of interference in the 2020 round shaped the process and outcomes.

The Effect of Secret Mandates

Legislatively prohibiting employers from sharing the content of the government’s mandate with union negotiators was new in 2020. While negotiators rarely share the full extent of their mandate, the PSEA curtailed the ability of employer-side negotiators to reveal elements of their mandate



Most respondents agreed that not having knowledge of where directives were coming from undermined their ability to build a strong bargaining strategy and respond appropriately, which was possibly one of the intended effects of the secret mandates.”

to advance bargaining or achieve a strategic goal. For union negotiators, secret mandates also made it difficult to ascertain which proposals were coming from the employer — and therefore were more malleable — and which were coming from the government. Union officials indicated that they were compelled to “guess the mandate” during negotiations (because knowing the source of a proposal would shape the union’s response) and this dynamic both slowed bargaining and put workers at a disadvantage.

When union negotiators directly asked employers what the mandate was, employers refused to disclose their mandate, with some denying they were acting under a mandate altogether. As bargaining proceeded, employer negotiators did find ways to indicate that they had to seek government approval. “They made it very clear that they have principals that they had to, you know, check in with and that they get their marching orders from,” said one union official. Employer negotiators also found ways to signal when a proposal came from the government without directly divulging that information. For example, when an employer tabled a proposal that it knew the union would dislike, the negotiator would find a way to distance themselves from the proposal.

They did say several times ‘as directed by the government. ... Particularly when they [tabled a specific concessionary proposal] they wanted us to know, please don’t shoot the messenger, this is directed by the government.

Union officials believed that, by the end of bargaining, they understood the monetary mandate. They remained uncertain about what other aspects of negotiations were bound by government directives. Some believed that PBCO had vetted almost every aspect of their agreements, while others thought only key issues were subject to oversight. Indeed, different tables may have been subjected to different levels of PBCO oversight. Most respondents agreed that not having knowledge of where directives were coming from undermined their ability to build a strong bargaining strategy and respond appropriately, which was possibly one of the intended effects of the secret mandates.

The secrecy forced upon employers bogged down negotiations and made the need for mediation more likely. Mediation (eventually) attenuated much of the impact of the secrecy because mediators, tasked with finding a resolution, were more open with the unions about at least some aspects of the mandate. The openness of mediators may also reflect their awareness that secret mandates in fact can slow bargaining and delay resolutions. It is unclear the degree to which the government was involved in the decision to disclose portions of the mandate during mediation.



While the PBCO involvement in bargaining added an element of professionalism to government interventions during the 2020 round, its overall impact served to entrench and solidify government interference.”

Effect of PBCO Involvement

The PBCO extending its involvement to all negotiation tables was also new. Its decision to sit at the big six tables could have streamlined bargaining, as the so-called “ghost at the table” had finally taken a corporeal — although silent — form. The effect of PBCO’s presence was, however, reduced by the decision to have the PBCO representative remain silent and by the secrecy surrounding the mandates. As a result, union negotiators remained unable to negotiate directly with the true decision-maker.

The PBCO’s decision to lurk in the background at smaller and decentralized tables was more problematic. Union representatives at the smaller tables were also unable to negotiate directly with the true decision-maker. Additionally, matters that, in the past, had been seen as local/institutional concerns (and thus not of interest to the provincial government) were now being treated as part of the government mandate. The loss of employer autonomy and the perception that the PBCO was insufficiently familiar with the specific local context of the workplace stymied negotiations and undermined trust at the table. One local-level negotiator compared 2020 to the 2017 round.

At [small employer tables], last time we were done in two days, everything settled. [This time] they had like nothing signed off even [after months of bargaining]. Even though there are fewer things on the table than before, it’s actually harder now.

This increased difficulty was attributed to the involvement of the PBCO.

While the PBCO involvement in bargaining added an element of professionalism to government interventions during the 2020 round, its overall impact served to entrench and solidify government interference, leading to a further weakening of the bargaining relationship between employers and unions. Further, its unwillingness to fully acknowledge its role as gatekeeper sowed distrust between the union negotiators and the government as a whole.

Effect of the UCP Political Agenda

In the lead-up to the 2020 bargaining, the UCP’s tone was combative and designed to pit public-sector workers against workers in other sectors. The government argued that public-sector workers were the highest paid in the country and rollbacks were needed because the province could no longer afford such high wages. For example, then-Finance Minister Travis Toews stated:

The mandate presented to the union reflects the province’s current economic and fiscal reality, ... The government is

asking unionized public service employees to be part of the solution, as we face the worst economic crisis in nearly a century. This is a fair and reasonable offer. The union's in-going proposal is asking for a five per cent raise, while thousands of Albertans working in the private sector have already taken pay cuts (Quoted in Bellefontaine 2020).

“Government political agendas influencing dynamics at bargaining tables are nothing new. The growing power of the PBCO to enforce that agenda simply makes government interference more effective.”

In the first year of its mandate, the UCP embarked on a significant plan to contain spending, including in public-sector wages. At the same time, the government passed multiple pieces of legislation aimed at weakening employment protections and curtailing union power. This anti-union animus shaped the dynamics at bargaining tables. As one union official put it:

Look, every round is different. A lot of it comes down to what the [goals] of the government of the day is, how nasty that agenda is, versus not. ... This particular government was inherently nasty because they don't like unions.

Union officials believed that the aggressive rollbacks that employers demanded in their opening offers reflected the government's broader political strategy at the time. They also believed the lack of bargaining progress until mediation reflected the government's desire to be seen by the public as acting tough on public-sector unions and "reining in" spending. It was only the impact of COVID and a brightening fiscal situation that led to the mandates shifting in mediation.

Government political agendas influencing dynamics at bargaining tables are nothing new. The growing power of the PBCO to enforce that agenda simply makes government interference more effective. Ad hoc interventions implemented by individual ministers have given way to highly structured, coordinated, and disciplined institutional efforts.

Conclusion

There is no question the 2020 round of bargaining was difficult for all parties and was made more challenging with the upheaval of the COVID-19 pandemic. If looked at in the context of both Alberta's history of government involvement in bargaining and the broader evolution of government interference across Canada, the 2020 round can be seen as a continuation of the trend toward growing sophistication in how governments approach public-sector bargaining. Specifically, governments are carefully recalibrating their legislative interventions to hopefully avoid constitutional issues.

“While the imposition of secret mandates had only a mixed effect on the 2020 round of bargaining, the secrecy can be seen as Alberta's unique contribution to the ongoing evolution of governments' efforts to interfere with public-sector bargaining while abiding by the evolving jurisprudence.”

In Alberta, the introduction of secret mandates and the active management of bargaining by the PBCO in the 2020 round is a continuation of a decade-long intensification of government involvement. Coupling this trajectory with the UCP's political agenda and their confrontational approach to workers and unions led to an unprecedented degree of intervention, both legislatively and informally, in the 2020 bargaining round. The significance of this finding is two-fold.

First, the combination of new legislative tools enhancing the government ability to interfere in bargaining and the increasingly active role taken by the PBCO meant government interference was more effective than in the past. The effectiveness of past ad hoc interventions by government ministers or the premier was highly dependent upon the capacity of these actors. The creation of a structured, professional body of civil servants tasked with securing government mandates dramatically increased the effectiveness of government intervention. In both the 2017 and the 2020 rounds of bargaining, the government managed to achieve its goals of a pattern settlement. External factors beyond the government's control were the key limiting factor.

Second, while the imposition of secret mandates had only a mixed effect on the 2020 round of bargaining, the secrecy can be seen as Alberta's unique contribution to the ongoing evolution of governments' efforts to interfere with public-sector bargaining while abiding by the evolving jurisprudence. To this end, it is likely we will see other jurisdictions in Canada employ secret mandates as one of their strategies for legislatively interfering with public-sector bargaining.

Prospects for the 2024 Round



The upcoming round of negotiations once again begins early in the recently re-elected UCP's mandate. Traditionally, this is the political window when governments attempt to complete those parts of their agenda that they expect to be unpopular with the public."

Collective agreements covering approximately 200,000 public-sector workers will expire in 2024. Given the long-term trajectory of public-sector bargaining in Alberta, it is expected that the provincial government will again interfere with the process. This will likely include using secret mandates to restrict employer discretion at the table and enforcing them via the PBCO. A PBCO representative will probably be present at the big six tables, although how actively they will participate is unknown. PBCO representatives will also likely monitor and influence negotiations at the hundreds of smaller tables, even if resource constraints prevent them from attending.

What will be in the secret mandates? The upcoming round of negotiations once again begins early in the recently re-elected UCP's mandate. Traditionally, this is the political window when governments attempt to complete those parts of their agenda that they expect to be unpopular with the public. This may include renewed calls for reductions in public-sector compensation. Given the province's healthy fiscal balance sheet and stubbornly high inflation, wage rollbacks may be difficult to justify. Alternatively, an offer of small (or no) wage increases may be bundled with other forms of reductions, such as lay-offs, privatization, and increased employer flexibility. Some of these reductions may take place outside the bargaining process, but would nonetheless impact negotiations.

There may also be a continuation of efforts to standardize agreements across sectors or move to a one-size-fits-all model. Such a requirement may mean that provisions in specific collective agreements that are different and perhaps responsive to local issues are refused or removed at the negotiating tables. Such a mandate may assist employers in reversing gains previously made by stronger bargaining units over time. It may also prevent employers from responding to local needs.

There is little evidence to suggest that the aggressive, anti-union tone taken by the UCP will differ from 2020. Pre-COVID, the UCP government adopted strong language using anti-union rhetoric and accusing public-sector workers of being overpaid and unreasonable in their demands. COVID-19 muted the effectiveness of this rhetoric at justifying rollbacks. The 2023 UCP caucus is likely to be equally or more inclined to adopt a similar strategy, especially at the beginning of negotiations, and Albertans should expect a confrontational tone early in the 2024 round.

In the fall of 2023, the government passed Bill 5: *Public Sector Employers Amendment Act*. This bill expands the scope of secret mandates (and thus the role of the PBCO) to include non-unionized public-sector employees and implements new penalties against employers who breach the mandates.

It also authorizes the minister to create employer committees which bring together multiple employers to “coordinate collective bargaining” (s.3.3(3)(b)) and employer associations, set up as corporations, to coordinate in broader matters of human resources (including non-union employees).

The government has not provided information about the purpose of these bodies. At the time of writing, it is also unclear whether any will be established in time for the 2024 bargaining round. If they do move ahead with associations, that action will mark a new level of government interference at bargaining tables across the sector. The move toward multi-employer bargaining committees and associations indicates a desire on the part of the UCP to further coordinate bargaining across employers, likely on a sectoral basis (e.g., post-secondary employer association). Sectoral coordination could streamline the implementation of government secret mandates and facilitate the harmonization of agreements within a sector. For unions (which generally bargain individually), it would mean bargaining with not just one employer and the government, but with a coordinated cluster of employers and the government.

“There are recent examples in other provinces where unions, faced with sectoral or centralized bargaining, developed a coordinated strategy that maximized their bargaining power.”

Sectoral bargaining has potential risks and rewards for public-sector workers. There are recent examples in other provinces where unions, faced with sectoral or centralized bargaining, developed a coordinated strategy that maximized their bargaining power. In 2021, 22,000 New Brunswick public-sector workers across 11 union locals won significant pay increases after a 16-day strike in the face of a provincially imposed austerity agenda. In the fall of 2023, a coalition of Quebec public-sector unions representing 420,000 workers built a common front against the provincial government. The coalition staged a series of multi-day strikes through the fall and in early 2024 signed an agreement with significant improvements to wages and working conditions.

At a minimum, any move toward sectoral employer associations will require increased sectoral cooperation and coordination among Alberta public-sector unions. Unions will need to remain watchful in the early stages of 2024 bargaining for signs that these new committees and associations are being established for this round and also remain open to increased coordination and cooperation across unions and sectors.

There are several strategies that public-sector workers and their unions can consider as they prepare for bargaining in 2024. Unions can adjust their bargaining strategies at the table to counter the government’s interference, including:

- As a condition of bargaining, demand greater transparency from employers regarding the scope and content of government mandates. Understanding what aspects of the employer position are imposed and

what are at the discretion of the employer should be a prerequisite to bargaining.

- Increase coordination between unions and across segments of the sector to share information and maximize pressure on the government to find fair settlements across the sector.
- Turn the tables on the government's desire for a pattern settlement on wages by publicly articulating a joint union position on wage expectations.
- Demand a more upfront role by the PBCO, given their centrality to negotiations. Demand that the PBCO actively participate at the table as the government representative.

Unions, or potentially the labour movement as a whole, may also wish to legally challenge whether the *PSEA*'s secret mandates are a violation of workers' *Charter*-protected freedom of association because they substantively interfere with collective bargaining. The narrow nature of associational rights established in *Health Services* may mean secret mandates are permissible in whole or to certain degrees. Despite this, the potential to limit or bar this tactic may make such a challenge worthwhile. Not challenging this tactic is a *de facto* acceptance of it by unions. Further, while a *Charter* challenge would not be resolved prior to the 2024 round of bargaining, unions could seek an interim injunction, which might limit the government's use of this tactic until the challenge was decided.

Unions can reduce the effectiveness of the secret mandates by educating their members about the existence and deleterious effects of the mandates. They can also encourage members to place pressure on UCP Members of the Legislative Assembly (and their donors) to respect free collective bargaining.

The public may also be convinced to engage in pressure tactics. Most members of the public have experienced unfair bargaining situations, such as negotiating a car purchase only to have "the manager in the back" veto the agreement. A carefully crafted communications campaign highlighting how fundamentally unfair the government's negotiating tactics and goals are to teachers, nurses, and other public-sector workers may attach significant political costs to this bargaining strategy.

Furthering this tactic, unions may consider concrete ways to make the UCP bargaining strategy politically costly, such as pushing negotiations closer to provincial elections, although this would need to be balanced with keeping the membership engaged over a prolonged period. The farther bargaining goes into the government's term, the more likely ongoing fissures in the UCP will manifest and the more reluctant the government may become to force a showdown.



Public-sector workers and their unions should prepare for the government to interfere with bargaining to a degree never before seen in Alberta.”

Finally, unions will benefit from a well-organized and mobilized union membership that is prepared to take action to achieve their goals at the table. This increases the union’s bargaining power, which weakens the employer’s position. Ultimately, a government’s mandate is only as strong as the determination of the politicians imposing it. If public-sector workers are not prepared to accept an unfair deal and are willing to take action to protect their rights, this may shift the political calculus within the UCP enough to change its mandate.

Action can take many forms, including informal expressions of displeasure through information pickets, rallies, and other steps protected by the freedom of expression. It can also take the form of legal job action. The legal constraints around job action may require the labour movement to explore creative alternatives beyond formal government-sanctioned work stoppages.

No one can predict the outcomes of the 2024 round. The trend in Alberta suggests public-sector workers and their unions should prepare for the government to interfere with bargaining to a degree never before seen in Alberta. The response of public-sector workers and their unions will play a significant role in determining whether this strategy of intensifying interference will continue in the future.

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