

## **CHAPTER 5**

### **GOVERNMENTS AND LABOUR RELATIONS BOARDS**

#### **Preface**

In this chapter, students will consider the third main actor—the government. This will include government objectives—the reasons for government involvement in labour relations—and methods the processes available to governments to achieve their objectives. They will also briefly discuss the other parties involved in labour relations, paying special attention to labour relations boards.

#### **Learning Objectives**

- 5.1 Explain the objectives of governments and the processes or methods used to achieve those objectives.
- 5.2 Explain the composition, roles, and importance of Labour Relations Boards.

#### **Outline/Table of Contents**

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#### **I. Government Objectives and Processes**

Some of the objectives and processes we will explore, including the regulation of labour relations outcomes through labour relations legislation, have a direct impact on unions and employers. Other objectives, such as regulating the economy through monetary and fiscal policy, have an indirect effect on employers and unions. Monetary policy that provides for higher interest rates to control inflation is not directly aimed at employers and unions; however, it will affect them. Some of the objectives overlap: for example, government attempts to regulate labour relations outcomes also protect the public interest. Government efforts to regulate the economy also affect the distribution of rewards that may be a government concern. Fiscal policy that reduces taxes to stimulate the economy should increase employment and thus affects the distribution of rewards. There may be conflict between some of the objectives and processes. Some observers argue that efforts to pursue equal opportunity and regulate employment conditions through employment equity and employment standards legislation deter business and negatively impact the economy. One process could help achieve several different objectives. For example, providing financial assistance to a particular industry serves the government objectives of regulating the economy and maintaining office.

## Regulation of Labour Relations Processes

The key processes in labour relations are union organizing, contract negotiation and the administration of collective agreements—each requiring government regulation. Prior to government regulation of the organizing process, strikes—sometimes violent—were used to force employers to recognize and negotiate with unions. Prior to government regulation, employers discriminated against union supporters. The primary method governments use to regulate labour relations processes is labour relations legislation. Figure 5-2 lists the labour laws affecting private-sector employers in federal, provincial, and territorial jurisdictions.

This legislation sets out rules regulating how a union obtains the right to represent employees, listing the rights of employers during an organizing campaign, imposing a duty to bargain in good faith on both the parties and requiring disputes during the term of a collective agreement to be resolved through arbitration.

Collective agreements, strikes and lockouts are important outcomes in the labour relations system. Negotiated contract terms could affect the economy by causing inflationary pressure. Some strikes and lockouts could harm the public. Certain unionized employees may still need protection regarding the terms and conditions of their work, because being in a union does not guarantee adequate rewards or safe working conditions. In light of these possible consequences, governments use several methods to regulate labour relations outcomes. For example, labour relations legislation in all jurisdictions requires a strike to be approved by an employee vote, and a strike notice is required in some jurisdictions. Governments can pass back-to-work legislation to end a particular strike. Employment standards legislation sets out maximum or minimum terms and conditions of employment such as hours of work.

## Protection of the Public Interest

There is a broader public interest that needs protection. It is possible that a strike might not seriously harm the employer because it can carry on business using an inventory of finished product. It is possible that a strike might not seriously harm the union because of strike pay, financial assistance from other unions and the attainment of alternative work by striking employees during a work stoppage. However, a strike could inconvenience or harm the public interest by eliminating an important service such as public transit. To limit the impact of such labour disruptions to the public, governments may seek to avoid strikes and lockouts through one or more of the following: labour relations legislation that places restrictions on strikes and lockouts; assistance during negotiation in the form of conciliation and mediation; and back-to-work legislation.

## Regulation of the Economy

The regulation and improvement of the economy is a strategic government objective that will affect employers and unions. Governments may wish to control inflation and unemployment through monetary and fiscal policy. They may also seek to establish a positive climate for investment through measures such as tax cuts and aid for industry. Concern about government debt levels could lead to reductions in government spending and employment. The federal government may pursue trade agreements, such as USMCA, that will impact employers and unions.

**Assistance to Industry**

All levels of government may engage in efforts to aid an industry. During the COVID-19 pandemic the federal government assisted both employers and employees negatively impacted by the pandemic. In particular, the federal government offered employers wage and rent support.

**Regulating Market Practices and Results**

There are concerns about the practices and results in an unregulated market economy. It is possible that without regulation, safety in the workplace would be diminished and undesirable practices such as discrimination in hiring or promotion practices could increase. There may also be concerns about the equitable distribution of rewards or unchecked workplace harassment.

Government methods in this area include employment standards legislation that sets out minimum terms of employment, including wages, vacations, leaves of absence and work hours. Employment standards legislation will affect the negotiation and administration of collective agreements. The collective agreement must provide employees with at least these guarantees provided in the legislation. If the relevant legislation provides for a minimum bereavement leave, a collective agreement cannot provide less time off. This is sometimes referred to as not being able to contract out of such employment standards obligations. If the collective agreement did not include a leave of absence for parents adopting children, the leave provided for in legislation would have to be granted to those covered by the contract. The employer and the union will also have to ensure that changes in employment standards legislation, which may provide new or additional protection to employees that is not provided in the agreement, have been complied with. For example, employment standards legislation in most jurisdictions has been amended to provide for compassionate care leave. This development allows employees to take unpaid time off to attend to seriously ill family members.

There are important considerations associated with employment standards legislation. First, many of the standards are set at a low level. For example, the provided vacation entitlement is minimal, and the minimum wage could not be considered a living wage. Second, certain categories of employees may be subject to special rules or exemptions under employment standard laws. For example, in Ontario, paramedics are not entitled to overtime pay; an employer and union representing this job class may agree in writing that the general rest period rule does not apply, and job incumbents are entitled to eight consecutive hours free from work each day. Third, there are problems with the enforcement of the legislation.

Human rights legislation protects employees from discrimination and harassment. Health and safety legislation provides protection against accidents, industrial diseases and in some jurisdictions, harassment. This legislation sets out minimum terms for the workplace, such as requirements for a health and safety representative or committee, which may be exceeded in a collective agreement. All jurisdictions have equal pay for equal work legislation, usually provided for in employment standards legislation. Pay equity laws have been enacted to achieve equal pay for work of equal value to female-predominant job classifications.

Unions have a role in the administration and enforcement of such legislation via applicable collective agreement language. Employment equity legislation attempts to address historical discriminatory employee recruitment and selection practices by employers by removing barriers and taking proactive measures to ensure that four designated groups—women, visible minorities, individuals with disabilities and Indigenous people—are adequately represented in the workplace. Unions may have a role in the preparation of required equity plans and the enforcement of this legislation through grievance and arbitration processes.

### **Government Employers: Objectives**

In 2021, there were 319,601 federal public-sector employees. Further, 11% of all Ontario employees work for the provincial government. Notably, provincial health care is the largest employer in every province. The manner in which governments deal with their own employees and unions may have an effect on employers in the private sector. If governments take a leading role by providing innovative terms of employment, such as daycare services, private-sector employers and unions will likely negotiate the same issues. When governments take a harder line with unions representing public-sector employees, this too may influence private-sector labour relations. Although public-sector employees in some jurisdictions are regulated by the legislation governing the private sector, some governments enact special public-sector labour relations legislation. For example, The Saskatchewan Employment Act regulates both government employees and those in the private sector, whereas in Ontario there is a Crown Employees Collective Bargaining Act, which covers government employees only. Public-sector legislation regulates who can unionize, the issues that can be bargained and the employee's right to strike. Governments have from time to time made use of back-to-work legislation. They may also have the same labour relations processes as private-sector employers, including contract negotiation, lockout provisions in some cases, grievances and arbitration and public relations campaigning.

Finally, it must be noted that government plays other roles and engages in other activities not referred to here that affect employers and unions. Governments provide secondary and post-secondary education, which affects the supply of labour available to employers. Federal and provincial governments have provided significant amounts of funding to encourage young Canadians to pursue successful careers in skilled trades, a workforce sector that is largely unionized. In addition to these programs, the federal government has made funding available to small businesses to encourage the hiring of young apprentices in certain high demand trades.

## **II. Labour Relations Boards**

Labour relations legislation establishes a Labour Relations Board in each jurisdiction, which is responsible for administration of the legislation. Most Labour Relations Boards in Canada are three-person representational bodies consist of a neutral chairperson and vice-chairs, and representatives from employers and unions. Although in some jurisdictions there is a provision for hearings to be conducted by a neutral chair or vice-chairperson, some hearings are conducted by a three-person panel including one labour representative, one employer representative and a neutral chair or vice-chair. While the government appoints Board members and the Board must apply the relevant legislation, the Board is independent from government.

## **Board Responsibilities**

Labour boards play a central role in the labour relations system. They have the authority to grant bargaining rights to unions and to terminate those rights. When it is alleged that an employer or a union has violated labour relations legislation, a complaint is filed with the appropriate Board.

The jurisdiction of Labour Relations Boards has been increasing in recent years. Some have a broader jurisdiction than others; for example, in British Columbia the Board has responsibility in areas that other Boards do not, including the settlement of disputes through a mediation division. In some jurisdictions, there is special legislation and a separate Board that deals with the public sector.

## **Procedure and Remedies**

On an application to a board, a settlement officer attempts to resolve disputes so that a formal hearing is not required. Very often a hearing is avoided using this approach. The Boards have extensive remedial powers, including ordering the reinstatement of employees and the payment of damages.

Although board decisions cannot be appealed, two courses of action are open to a party not satisfied with a decision. An application can be made either for the board to reconsider, or for judicial review of the decision. An examination of board annual reports shows that although the boards make thousands of decisions every year, very few undergo judicial review. For example, the Manitoba Labour Relations Board, in its 2019-2020 annual report, noted there were 350 cases heard that year.

Referring disputes under labour relations legislation to a board instead of the court system has a few advantages. Individuals with expertise in labour relations make the decisions, and they are made faster, with less expense.

## **III. Other Groups**

### **Arbitrators**

Arbitrators play an important role in the labour relations system. Interest arbitration, seen more commonly in the public sector, involves arbitrators settling certain terms of the collective agreement when the management and union representatives are not able to successfully negotiate a contract. When a union and an employer have a dispute about the interpretation, application or administration of an existing collective agreement, it is referred to rights arbitration. A sole arbitrator or arbitration board in such cases, hears evidence presented by the parties and renders decisions that are binding upon them. The termination of an employee is one important issue that is referred to arbitration. A key point to note is that arbitrators are independent from government.

Some provinces have voluntary professional associations for labour–management arbitrators and websites related to current members, criteria for membership and a code of ethics. There are also web-based directories of participating labour arbitrators by regions in Canada showing their availability for hearing dates.

## **Courts**

The courts play an important role in labour relations. Although it is seldom done, it is possible to have an arbitrator's decision reviewed in the courts. In 1999, the Supreme Court of Canada in the *Meiorin* case (British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U., 176 D.L.R. (4th) 1), which established the requirements for a bona fide occupational requirement, illustrates the role of the courts.

## **Human Rights Tribunals**

Federal provincial, and territorial regulated employers must comply with human rights legislation by not discriminating against an employee based on specific prohibited grounds as outlined in the particular code. Collective agreements typically include language requiring both union and management representatives to act in a manner that is consistent with human rights legislation. This enables union members, through their bargaining agent, to utilize the grievance process in the collective agreement to address alleged discriminatory practices. It also offers a faster route to resolve a complaint than pursuing a claim with a human rights tribunal. However, there are instances where a complaint may proceed directly to a tribunal.

## **IV. Review Questions**

### **1. Why does government become involved in labour relations?**

Governments become involved in labour relations for a number of reasons including the following:

To regulate labour relations processes and outcomes. Legislation regulates the union organizing process including who is allowed to unionize, how unions obtain bargaining rights (the issue of relying on membership cards versus a mandatory representation vote is considered in the next chapter), and union and employer conduct during a union organizing campaign. Legislation also regulates the negotiation process imposing a duty to bargain in good faith. Legislation requires certain terms to be included in collective agreements including an arbitration process for disputes and a minimum one-year term. Governments may also be concerned with the compensation levels provided in collective agreements and have on occasion enacted legislation limiting wage increases.

To assist employers and unions. Governments provide conciliation and mediation services to unions and employers negotiating collective agreements. Some governments also provide services aimed at helping the parties improve their relationship.

To protect the public interest. Governments prevent some labour disputes from harming the public by restricting the right to strike and ending some strikes.

Employment. The government is a very large employer.

Political activity. Some government action may be undertaken in response to the political activity of employers and unions.

Regulating market practices and results. Governments have enacted legislation providing for minimum terms of employment, which affect unions and employers. Human rights and employment equity legislation regulates employment practices.

Assisting industry. Examples of government aid for industry are provided in the text.

## **2. What methods do governments use to regulate and influence the labour relations system?**

Governments regulate and influence the labour relations system through the methods. Legislation affecting unions and employers includes labour relations legislation, human rights legislation, employment standards legislation, and on occasion wage control legislation. Governments directly or indirectly employ approximately 18 percent of Canadian workers. The terms and conditions which governments agree to in collective agreements may influence other union-management relationships. Monetary and fiscal policy regulating the economy will influence unions and employers.

## **3. What is the composition of a labour relations board?**

Members of Labour Relations Boards are appointed by the government. The Boards consist of a neutral chair and vice-chairs, and representatives from employers and unions.

## **4. Why are Labour Relations Boards key actors in the labour relations system?**

The responsibilities of Labour Relations Boards are listed in Key Considerations 5-1. The key role of the Boards is illustrated by noting that all of the following events would involve a Labour Relations Board:

- an application for certification by a union
- an application for decertification
- a complaint that an employee has been dismissed because of union activity
- a complaint that an employer has refused to negotiate with the union
- an illegal strike or lockout
- an application for first contract arbitration (not all jurisdictions)

## **V. Discussion Question**

**1. Give two examples of how employment standards legislation protects the terms and conditions of work for employees. Are these examples of minimum terms? Could each standard be exceeded in a collective agreement? Explain:**

Employment standards legislation has been criticized for providing only minimal protection to employees for a number of reasons including:

- some employees are exempted from coverage
- some of the standards are low
- enforcement of the legislation is not adequate

The standard relating to vacations provides only minimal protection. In some jurisdictions the legislation only provides for two weeks of vacation, and in only one jurisdiction (Saskatchewan) does it eventually provide for four weeks. This appears to be below the standard practice in many industries. Maternity and parental leave appear to provide more adequate protection. Depending on the jurisdiction maternity leave is 15 to 18 weeks and parental leave is 27 to 34 weeks. By combining these two leaves a mother will be able to be away from work approximately one year.

## **VI. Web Research**

Students should be able to identify that federal, provincial, and territorial labour boards are comprised of independent individuals and representatives from employers and unions. The labour boards provide resources, such as educational information, for employers, unions, and employees. Process includes certification of unions, resolving disputes, conciliation, and how to file complaints.

## **VII. Vignette**

### **Saskatchewan Labour Relations Board: An Illustration of What Labour Relations Board Do**

Many people have heard of a labour relations board, knowing these boards relate to unions. Others involved with unions are more familiar yet have not directly worked with a board. An example of what labour relations board do comes as The Saskatchewan Labour Relations Board heard the case of Signal Industries. Signal decided to close its sign manufacturing plant in Regina. Signal industries planned to produce its signs at their Edmonton plant as this plant was more efficient. Signal then notified the Regina employees of the closure with the union responding that this closure was a technological or organizational change within the Saskatchewan Employment Act (SEA) and provided a notice to bargain a workplace adjustment plan. "Signal proceed to close the Regina plant 86 days after receiving the notice to bargain. The union then filed an unfair labour practice application claiming that the employer had breached the SEA by closing the plant at a time prohibited by the technological and organizational change provisions of the SEA."



This closure was then reviewed by the Saskatchewan Labour Relations Board who determined that as Signal Industries transferred work to Edmonton, it was an organizational change that affects the employment of a significant number of employees. The Board concluded that in fact the employer had decided to close the Regina location before informing the union, and Signal's refusal to reconsider the closure decision did not mean it had bargained in bad faith. Therefore, Signal was not required to continue to operate its Regina plant.

**VIII. Case Incident: Red Lobster v. United Food and Commercial Workers, Local No. 401**  
**1. Which roles of government illustrated here?**

The main roles of government referred to in this chapter are the employer and regulator roles. Here the government's main role has been to assist the union and employer maintains the viability of the operation.