

# PUBLIC SECTOR EMPLOYERS ACT

## CHAPTER 65

*Assented to July 29, 1993*

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

## PART 1 INTRODUCTORY PROVISIONS

### Definitions

1. In this Act

“council” means the Public Sector Employers’ Council established under section 3;

“employers’ association” means an employers’ association established under section 6;

“minister”, other than in Part 3, Division 2, means the minister who is the chair of Treasury Board;

“public sector employee” means a person employed by a public sector employer but does not include a justice or a person employed as a justice;

“public sector employer” means

- (a) the government,
- (b) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has
  - (i) on its board of management or board of directors, 50% or more of members who are appointed by an Act, a minister or the Lieutenant Governor in Council, or
  - (ii) employees appointed under the *Public Service Act*, and that is designated in the regulations,
- (c) a board of school trustees as defined in the *School Act*,
- (d) a university as defined in the *University Act*,
- (e) an institution as defined in the *College and Institute Act* or the British Columbia Institute of Technology or the Open Learning Agency,
- (f) a hospital as defined in the *Hospital Act* or an employer that is designated in the regulations as a health care employer, and
- (g) an employer that is designated in the regulations as a social services employer;

“public service sector” means the government and the employees of the government;

"sector" means all the employers referred to in a paragraph of the definition of "public sector employer" and the employees of those employers.

### Purposes of Act

2. The purposes of this Act are
- (a) to ensure the coordination of human resource and labour relations policies and practices among public sector employers, and
  - (b) to improve communication and coordination between public sector employers and representatives of public sector employees.

## PART 2

### PUBLIC SECTOR EMPLOYERS' COUNCIL

#### Council established

3. (1) A council known as the Public Sector Employers' Council is established.
- (2) The council consists of the minister and the following members appointed by the Lieutenant Governor in Council:
- (a) not more than 7 persons each of whom is either a member of the Executive Council or a deputy minister;
  - (b) a person nominated by each of the employers' associations established under Part 3;
  - (c) the commissioner appointed under the *Public Service Act*.
- (3) The minister is the chair of the council.
- (4) The chair may authorize another member of the Executive Council to act as chair of the council during his or her absence from a meeting of the council.
- (5) A member of the Executive Council other than the minister may authorize a deputy minister or other employee of the government to represent the member of the Executive Council at a meeting of the council.
- (6) If an employers' association fails to nominate a person for the purpose of subsection (2) (b), the Lieutenant Governor in Council may appoint a person to represent the employers' association on the council.
- (7) A representative of the Union of British Columbia Municipalities may attend meetings of the council as an observer.

### Functions of the council

4. (1) The functions of the council are
- (a) to set and coordinate strategic directions in human resource management and labour relations,
  - (b) to advise the government on human resource issues with respect to the public sector, and
  - (c) to provide a forum to enable public sector employers to plan solutions to human resource issues,
- consistent with cost efficient and effective delivery of services in the public sector.
- (2) In addition, it is a function of the council to enable representatives of public sector employees to consult with public sector employers on policy issues that directly affect the employees.

### Employees of the council

5. (1) The council may employ officers and employees it considers necessary for the purposes of this Act, and may determine their duties, conditions of employment and remuneration.
- (2) The council may retain consultants, experts and specialists and fix the remuneration of the persons retained and the terms and conditions of the retainers.
- (3) The Lieutenant Governor in Council may designate all or any of the persons employed under subsection (1) as employees under the *Pension (Public Service) Act*.
- (4) A person appointed under subsection (1) to whom the *Pension (Public Service) Act* applies under subsection (3) shall be deemed to be an employee for the purposes of the *Pension (Public Service) Act* and the council shall be deemed to be the employer of the person for the purposes of that Act.

## PART 3

### PUBLIC SECTOR EMPLOYERS' ASSOCIATIONS

#### Division 1 – Formation of Employers' Associations

### Public Sector Employers' Associations

6. (1) An employers' association must be established for each sector other than the public service sector.

- (2) The purposes of an employers' association are to coordinate the following with respect to a sector:
  - (a) compensation for employees who are not subject to collective agreements;
  - (b) benefit administration;
  - (c) human resource practices;
  - (d) collective bargaining objectives.
- (3) In addition, it is a purpose of an employers' association
  - (a) to foster consultation between the association and representatives of employees in that sector, and
  - (b) to assist the council in carrying out any objectives and strategic directions established by the council for the employers' association.
- (4) Every public sector employer referred to in paragraphs (b) to (g) of the definition of "public sector employer" must become and remain a member of the employers' association for the sector that applies to that employer.

## Requirements

7. (1) Every employers' association must
  - (a) make provision for the representation of the government on the board of directors of the association,
  - (b) make provision to levy fees and assessments from its members for the purposes referred to in section 6,
  - (c) have a properly constituted board of directors and bylaws or rules considered necessary by the minister for the administration and management of the employers' association, and
  - (d) comply with any further conditions prescribed by the Lieutenant Governor in Council
- (2) If authorized to do so by its bylaws or rules, an employers' association may levy additional fees or assessments for the provision of other services for its members.
- (3) An employers' association may bargain collectively on behalf of its members if authorized to do so under section 43 of the *Labour Relations Code* or section 11 of this Act.
- (4) Despite any other Act, the constitution and bylaws or rules of the employers' association are not effective until approved by the minister.

- (5) Despite the *Society Act*, an employers' association must not exercise any of the borrowing powers conferred by the *Society Act* without the prior approval of the minister.

### Resolution of constitution and bylaws

8. (1) If, in the opinion of the minister, the members of an employers' association are unable or unlikely to agree on the constitution and bylaws or rules of the employers' association, the minister may refer the disagreement to a person to inquire into the disagreement and make recommendations to the minister.
- (2) After receiving the recommendations under subsection (1), the minister may recommend that the constitution and bylaws or rules of the employers' association be prescribed by the Lieutenant Governor in Council.
- (3) When the constitution and bylaws or rules of an employers' association are prescribed, they apply to the employers' association as if they were established and approved under section 7.
- (4) A person who inquires into a disagreement under subsection (1) has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

## Division 2 – Collective Bargaining

### Definitions

9. In this Division
- “board” means the Labour Relations Board established under the Code;
- “Code” means the *Labour Relations Code*;
- “minister” means the Minister of Labour and Consumer Services;
- “organization” means an organization formed under section 12.

### Accreditation for collective bargaining

10. (1) An employers' association or 2 or more members of an employers' association may apply to the board for accreditation under section 43 of the Code.
- (2) In addition to its other purposes under this Act, an employers' association that is accredited under the Code has the purpose of acting as bargaining agent for the members of the employers' association that are named in the accreditation.

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**Direction by minister**

- 11.** (1) Subject to subsection (2), the minister may, on application of 2 or more employers that are members of an employers' association or on his or her own motion and after the investigation considered necessary or advisable, direct the board to consider whether in a particular case an employers' association or any group of employers in an employers' association would be an appropriate bargaining agent for the employers in a sector or a part of a sector.
- (2) The minister must not make a direction under this section unless
- (a) an employers' association or any employers that are members of an employers' association have at any time before or after the commencement of this Act made an application for accreditation under section 43 of the Code or any predecessor to that section, and
  - (b) the minister considers that the direction is necessary to secure and maintain industrial peace and promote conditions favourable to settlement of disputes.
- (3) If a direction is made under subsection (1), the board must determine whether the employers' association or any group of employers in the employers' association is appropriate for collective bargaining for the employers in the sector or part of the sector and shall make any other examination of records, inquiry or findings including the holding of hearings it considers necessary to determine the matter.
- (4) The board must make its determination under subsection (1) within the time period specified by the minister.
- (5) After a determination under subsection (3) and if the board considers it necessary or advisable the board may recommend to the minister that the employers' association or any group of employers in the employers' association should be the bargaining agent for all or any of the employers in the sector.
- (6) When the minister receives a recommendation from the board, the minister may direct that the employers' association or any group of employers in the employers' association has exclusive authority to bargain collectively for the employers who are named by the minister and to bind those employers by collective agreement.
- (7) The board may modify or cancel an accreditation under section 43 of the Code to reflect a direction under subsection (6).
- (8) The minister may rescind or modify a direction under subsection (6).

**Collective bargaining by part  
of employers' association**

- 12.** (1) If the minister makes a direction under section 11 with respect to a group of employers in an employers' association, the employers in that group must form an organization for the purpose of allowing them to participate in collective bargaining as if they were named in an accreditation under section 43 of the Code.
- (2) In addition, it is a purpose of an organization to assist the employers' association in carrying out any objectives and strategic directions established by the employers' association for the organization.
- (3) An organization must establish a constitution and bylaws or rules that are satisfactory to the minister to enable the organization to participate in collective bargaining.
- (4) If, in the opinion of the minister, an organization is unable or unlikely to establish a constitution and bylaws or rules that are satisfactory to the minister, the minister may recommend that the rules for the organization be prescribed by the Lieutenant Governor in Council.
- (5) When the constitution and bylaws or rules of an organization are prescribed, they apply to the organization as if they were established and approved under subsection (3).
- (6) An organization may levy fees or assessments from the employers in the organization for the purpose of participating in collective bargaining.

**Application of *Labour Relations Code***

- 13.** (1) Sections 11 and 12 apply despite sections 43 and 44 of the Code.
- (2) The provisions of the Code respecting multi-employer bargaining other than sections 43 and 44 of the Code apply to an employers' association or organization that receives its authority to bargain collectively under section 12.

**PART 4****GENERAL****Regulations**

- 14.** (1) The Lieutenant Governor in Council may make regulations.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations

- (a) designating employers for the purposes of the definition of "public sector employer",
- (b) respecting the information that must be provided to the council to enable it to carry on its purposes under section 4,
- (c) prescribing conditions for the purposes of section 7 (1), and
- (d) prescribing the constitution and bylaws or rules of an employers' association or an organization formed under section 12.

### Transitional - regulations

- 15.** (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation this Act and to obviate any transitional difficulties encountered in so doing and, without limiting the generality of this, the regulations may for a period the Lieutenant Governor in Council specifies, suspend the operation of a provision of an enactment if that provision would impede the effective operation of this Act.
- (2) Unless earlier repealed, a regulation under subsection (1) is repealed one year after it is enacted.

### Consequential Amendments

#### *School Act*

- 16.** *Section 1 of the School Act, S.B.C. 1989, c. 61, is amended by repealing the definition of "teachers' union" and substituting the following:*

*"teachers' union" means an association of teachers that is certified as the bargaining agent for the teachers in one or more school districts under the Labour Relations Code and includes a council of trade unions that is certified to act as the bargaining agent for teachers under section 41 of the Labour Relations Code; .*

- 17.** *Section 26 is amended*

*(a) by repealing subsection (1) (b) and substituting the following:*

- (b) the terms and conditions, not inconsistent with this Act and the regulations, of an agreement between one or more boards and an association or a teachers' union, and , and*

*(b) in subsection (2) (b) by striking out "the board" and substituting "a board".*

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- 18.** *Section 27 is amended by striking out “enter into a collective agreement or an agreement with a board” and substituting “enter into an agreement with a board or a collective agreement”.*
- 19.** *Section 28 (2) is repealed and the following substituted:*
- (2) Despite sections 22 and 139 (i) of the *Labour Relations Code*, the unit appropriate for collective bargaining by teachers is a unit comprised of all teachers employed by one or more boards.

### **Commencement**

- 20.** Sections 1 to 15 come into force by regulation of the Lieutenant Governor in Council.