
# STATEMENT OF EVIDENCE
# to the
# COMMITTEE ON FREEDOM OF ASSOCIATION
# of the
# INTERNATIONAL LABOUR ORGANIZATION

**against the**

**Government of Alberta**

**with respect to**

***Public Sector Services Continuation Act*** **(Bill 45)**

**and**

***Public Service Salary Restraint Act*** **(Bill 46)**

**submitted by the**

**NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES**

**on behalf of its Alberta Component**

**HEALTH SCIENCES ASSOCIATION OF ALBERTA (HSAA/NUPGE)**

**February 2014**

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## Introduction

This complaint is being filed with the International Labour Organization (ILO) Committee on Freedom of Association by the National Union of Public and General Employees (NUPGE) on behalf of its Alberta Component, the Health Sciences Association of Alberta (HSAA/NUPGE).

**NUPGE** is one of Canada's largest unions with over 340,000 members. It has a federated structure made up of eleven provincially-based Component unions. Most of our members work to deliver public services of every kind to the citizens of their home provinces. We also have a large and growing number of members who work for private businesses.

**HSAA**, NUPGE's Component union in Alberta, represents 25,000 paramedical technical, paramedical professional, and general support employees in more than 240 disciplines. These workers are employed in the public and private health-care sectors in the western Canadian province of Alberta.

Over 21,000 HSAA members are employed by agencies that fall under the Labour Relations Code provisions that prohibit workers from striking. These agencies include Alberta Health Services (AHS), a provincial agency of the Alberta government that is responsible for delivering health services to the 3.9 million people living in Alberta, and Covenant Health, which operates a number of hospitals and long-term care facilities with funding provided by AHS. These members work in various health care professions, belong to a province-wide bargaining unit and are covered by one collective agreement. The collective bargaining process for these HSAA members, and several thousands more HSAA members, is governed by the restrictive *Labour Relations Code* (LRC), which like the province's *Public Sector Employee Relations Act* (PSERA), prohibits employees in the health care sector from striking.

This complaint is against the *Public Sector Services Continuation Act* (Bill 45)—attached as Appendix I—and the *Public Service Salary Restraint Act* (Bill 46)—attached as Appendix II. It also seeks to have the ILO Committee on Freedom of Association re-examine the blanket restriction against all strikes by close to 200,000 public sector employees in Alberta, which restriction was the subject of ILO complaints some three decades ago.

The two Acts were introduced in the Alberta legislative assembly on November 27, 2013, by the Conservative government led by Premier Alison Redford, with less than one day's notice, and without consultation with HSAA or any other unions impacted by the regressive legislation. In fact, the only prior notice of these two Bills came on November 26, 2013, when the Minister of Human Resources, Dave Hancock, introduced a motion to limit debate and enforce closure, even before the Bills were

tabled in the legislature. This is unheard of in Canada—members of a legislature being asked to limit debate and enforce closure on draft legislation that they have not yet seen. Both Acts were rammed through the legislature with little debate and passed on December 4, 2013.

Government news releases issued the day the Bills were introduced in the legislative assembly stated that the expressed intent of Bill 45 was "ensuring important public sector services that Albertans rely on are not put at risk by illegal strikes,"[1] and that Bill 46 was introduced "in an effort to reach a negotiated settlement with the union representing government workers."[2]

Unfortunately, the government's intent behind these two pieces of legislation has nothing to do with its stated objectives. The reality is that the legislation was designed to further tip an already unbalanced labour relations system within Alberta's public sector in favour of the government as employer.

**Bill 45 Synopsis**

Bill 45 is a marked and dramatic departure from the already significant existing legislative provisions to address "illegal strikes." It can be best described as legislative overkill. It places further restrictions on some 200,000 unionized public sector workers in Alberta, who already are denied their right to strike, and broadens the definition of a strike to include "any slowdown or any activity that has the effect of restricting or disrupting production or services."

It denies individuals the fundamental right to freedom of expression by introducing for the first time in Canada a vague legal concept of "strike threat," which makes it illegal to canvass the opinion of "employees to determine whether they wish to strike," or for an individual to freely express a view that calls for or supports strike action. Bill 45 also imposes huge punitive financial penalties on unions, their members and even on citizens unrelated to the unions, who encourage or support an "illegal strike" or "strike threat."

**Bill 46 Synopsis**

With respect to Bill 46, there is not a shred of evidence to support the government's claim that the legislation was designed to help ensure a negotiated settlement be reached between the government and the union representing the employees of the government.

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1 "New legislation to protect Albertans from illegal strikes," news release, Government of Alberta, November 27, 2013, http://alberta.ca/release.cfm?xID=354531148332A-ED48-1A74-EC3C096B4DF3F783.

2 "Labour legislation aims to restart negotiations with union," news release, Government of Alberta, November 27, 2013, http://alberta.ca/release.cfm?xID=3545412561304-00EB-D1DD-DD75363E4D37620C.

Bill 46 is designed to support the government's bad-faith approach to bargaining with its employees. It retroactively eliminated a scheduled arbitration process, giving government employees and their union no real input in determining their wages, benefits and working conditions for this round of bargaining. The only “choices” they have been given under Bill 46 are to either accept the employer's last offer, or to have that offer legislated on them.

The Alberta government has suggested that the legislation was necessary to protect taxpayers and to ensure the government fiscal position remains strong. There are, however, no economic grounds to justify this anti-democratic behaviour. Alberta's economy is growing; the province’s Gross Domestic Product is forecast to expand by 3.3 percent in 2013 and 3.5 percent in 2014. There were 33,800 jobs added in the Alberta labour market in the third quarter of 2013, and the latest unemployment rate for the province is 4.8 percent, the second-lowest rate among Canadian provinces, and 2.5 percent lower than the national unemployment rate.

In fact, the day before Bills 45 and 46 were tabled in the legislature, the Finance Minister reported an operational surplus of more than $1 billion in the first six months of the current fiscal year.

As will be shown in this Statement of Evidence, Bill 45 and Bill 46 are clearly ideologically driven. We believe the two Acts were designed to weaken workers’ rights and silence public sector unions in Alberta.

In ramming these two pieces of legislation through the Alberta legislature, the Alison Redford government has clearly demonstrated its willingness to negotiate in bad faith, ride roughshod over fundamental human rights of Canadian workers, and ignore the well-respected freedom of association principles of the ILO that both the governments of Canada and Alberta have set their signatures to.

**Alberta's Restrictive *Public Service Employee Relations Act* and *Labour Relations Code***

It should be noted that even prior to the introduction of Bills 45 and 46, public sector labour relations in Alberta were governed by two of the most restrictive collective bargaining laws in Canada.

The Alberta *Public Service Employee Relations Act* (PSERA)—attached as Appendix III —was passed in 1977 and governs the collective bargaining process for some 60,000 unionized provincial government employees in the province.

PSERA substantially interferes with the right of public employees to exercise their freedom of association rights by severely restricting the collective bargaining process.

- Section 70 prohibits public employees (the majority of whom do not provide essential services as defined by the ILO Committee on Freedom of Association) and their unions from participating in a strike or causing a strike.

- If the outcome of the collective bargaining process does not reach a negotiated settlement on terms and conditions of employment, the only dispute resolution mechanism available to unionized public sector employees is compulsory arbitration as provided for in Part 6, Division 2 of the PSERA.

- Section 69 allows employers to suspend for up to six months the deduction and remittance of union dues, assessments, or other fees payable to the union, if the members of the union participate in an illegal strike.

- Section 71 establishes penalties to any union officer, or representative of a union, or any other person, who causes or attempts to cause a strike. The fine for the union officer, or representative, who strikes, or causes or consents to a strike, is up to $10,000. The fine for a union, or any other person other than a union representative, who strikes or causes a strike is up to $1,000 a day for each day the strike continues.

The Alberta *Labour Relations Code* (LRC)—attached as Appendix IV—was passed in 2000 and governs the collective bargaining process for the other 100,000 unionized public sector employees not covered by PSERA. Almost all of HSAA's members are covered by the LRC.

- Division 16, Part 2 of the LRC prohibits all other health care workers not covered by PSERA from participating in a strike or causing a strike (the majority of whom do not provide essential services as defined by the ILO Committee on Freedom of Association).

- Section 97 of the LRC, like PSERA, makes compulsory arbitration the only dispute resolution mechanism available to unionized public sector employees.

- Section 114 gives the Labour Relations Board the authority to direct an employer to suspend the deduction and remittance of union dues for up to six months from employees covered by Section 96 who participated in a strike.

- Section 116 gives the government the authority to direct the Labour Relations Board to revoke the certification of a union that causes or participates in a strike.

- Section 160 establishes penalties identical to those contained in Section 70 of PSERA for any union officer, or union representative, or any other person, who causes or attempts to cause a strike.

**ILO Committee on Freedom of Association's previous rulings concerning PSERA and the LRC**

PSERA has been the subject of a number of ILO complaints and of the Committee's ongoing investigation dating back some 35 years.

The Committee first examined PSERA in November 1978, as a result of a complaint lodged by the Canadian Labour Congress (CLC) in 1977 (Case No. 893). The Committee's conclusions concerning Case No. 893 were critical of the restrictive nature of the legislation, which the Committee felt impeded the freedom of association rights of workers.

As part of the Committee's conclusions and recommendations contained in its Report No. 187 (November 1978), it noted:

> Having regard to the principles and considerations stated above, the Committee would suggest that the Government consider the possibility of introducing an amendment to the legislation so that in cases where strikes are prohibited in certain undertakings these undertakings should be confined to services which are essential in the strict sense of the term. [para. 534]
>
> The Committee would accordingly recommend the Governing Body to request the Government, in the light of the foregoing principles and considerations, to consider the possibility of extending the scope of matters that may be referred to arbitration so as to include those matters specified in section 48(2) of the Public Service Employee Relations Act which relate directly to conditions of employment of public employees. [para. 543]
>
> In these circumstances, and with regard to the case as a whole, the Committee recommends the Governing Body:
>
> > (i) . . . . suggest that the Government consider the possibility of introducing an amendment to the Public Service Employee Relations Act so that, in cases where strikes are prohibited in certain undertakings, the latter should be confined to services which are essential in the strict sense of the term;
> > (ii) . . . . request the Government to consider the possibility of extending the scope of matters that may be referred to arbitration so as to include those matters specified in section 48(2) of the Public Service Employee Relations Act which relate directly to conditions of employment of public employees. [para. 546]

PSERA was examined a second time, but this time with the *Labour Relations Act* (predecessor of the LRC), which was being scrutinized for the first time. This examination by the Committee on Freedom of Association in 1985 was the result of two complaints: the first submitted by the Confederation of Alberta Faculty Associations (Case No. 1234) and the second submitted by the Canadian Labour Congress (CLC) on behalf of NUPGE (Case No. 1247). Case No. 1247 concerned Bill 44, which amended both the Alberta *Labour Relations Act* and PSERA.

The Committee's recommendations and conclusions in these two complaints were guided by the report of an ILO study and information mission to three provinces in Canada (including Alberta) in September 1985 that was headed by Sir John Wood, CBE, LLM.

Based on the mission's report, the Committee reached the following recommendations and conclusions contained in its Report No. 241 (November 1985):

> The Committee recalls that it has been called to examine the strike ban in a previous case submitted against the Government of Canada/Alberta (Case No. 893) . . . . In that case the Committee recalled that the right to strike, recognised as deriving from Article 3 of the Convention, is an essential means by which workers may defend their occupational interests. It also recalled that, if limitations on strike action are to be applied by legislation, a distinction should be made between publicly-owned undertakings which are genuinely essential, i.e. those which supply services whose interruption would endanger the life, personal safety or health of the whole or part of the population, and those which are not essential in the strict sense of the term. The Governing Body, on the Committee's recommendation, drew the attention of the Government to this principle and suggested to the Government that it consider the possibility of introducing an amendment to the Public Service Employee Relations Act in order to confine the prohibition of strikes to services which are essential in the strict sense of the term. In the present case, the Committee would again draw attention to its previous conclusions on section 93 of the Act. [para. 131]
>
> The Committee is of the view that the existing system, under which the Public Service Employee Relations Board can prevent the referral to arbitration of matters which have formed the basis of a dispute, is not fully in accordance with ILO principles and is one which has led to considerable tension between the parties and to a loss of confidence by the unions in the arbitration machinery. [para. 135]
>
> On the other hand, the Committee would express some concern over two other individual amendments to the Labour Relations Act: Sections 105 and 106, prohibiting the threat of an illegal strike, could impede the freedom of workers' organisations to organise their activities in full freedom and place trade union officials in some jeopardy, given the broad definition of "strike" in the Act. [para. 139]
>
> In these circumstances, the Committee recommends the Governing Body to approve this part of the report and, in particular, the following conclusions:
>
> > (a) The Committee considers that the provisions of the Public Service Employee Relations Act and the Labour Relations Act prohibiting the right to strike of a broad range of provincial public servants and hospital workers go beyond acceptable limits on the right to strike recognised as deriving from Article 3 of Convention No. 87. The Committee requests the Government to re-examine the provisions in question in order to confine the ban on strikes to services which are essential in the strict sense of the term.
> > (b) As regards the broad range of public servants excluded from the collective bargaining process by section 21(1) of the Public Service Employee Relations Act, the Committee would draw the Government's

> attention to the principle that only civil servants engaged in the administration of the State may be so excluded. It requests the Government to reconsider this section in the light of this principle. [para. 140]

In all three complaints, the recommendations and conclusions were endorsed by the ILO Governing Body and forwarded to the government of Alberta, but were never acted upon by the government. Despite being asked repeatedly by the ILO Governing Body to follow up on the recommendations, the Alberta government has consistently refused to amend PSERA to conform with the ILO Governing Body's recommendations.

Now over three decades later, the Conservative government has passed legislation (Bill 45 and Bill 46) that further restricts and denies Alberta's public sector employees their right to freedom of association.

> ***NUPGE requests that in dealing with this complaint, the Committee on Freedom of Association take into account previous ILO complaints involving PSERA and the Labour Relations Act* (predecessor of the LRC) *and the failure of successive governments in Alberta to act on the recommendations of the ILO Governing Body.***

**Analysis of the *Public Sector Services Continuation Act* (Bill 45)**

Bill 45 increases financial penalties that already existed in PSERA and the LRC for unions and their representatives if they are found to be encouraging or threatening an "illegal" strike. The government says this is to protect taxpayers, but it is clear that the true intent of this Bill is to stifle dissent of any public-sector union member who dares to stand up for their rights.

There have been two "illegal" strikes in Alberta in the past decade. In April 2013, correctional officers (governed by PSERA) went on a five-day strike to protest unsafe working conditions at a new correctional facility, and in February 2012, hospital support workers (governed by the LRC) in a number of other communities staged a one-day wildcat strike after negotiations broke off between their union, the Alberta Union of Provincial Employees (AUPE), and Alberta Health Services (AHS).

Both of these "illegal" strikes were spontaneous acts by union members expressing their frustration with an obstinate and unresponsive government, and both times the government had no choice but to listen. This Bill aims to quash this sort of dissent with draconian fines—$1 million a day, in some cases—and by giving the Minister of Human Services the ability to fine individual workers as the Minister sees fit.

Among other things, Bill 45 unjustifiably and indefensibly:

- Alters the definition of "strike" by removing the requirement that the intent behind

any “strike” activity be to compel terms and conditions of employment through the withholding of work or service.

- Expands the definition of “strike” to include such terms as “diminution of services,” an activity that has the effect of “restricting or disrupting production or service,” in addition to “a refusal to work or continue working” (see section 1(j) of the Act). This expanded definition could prevent employees from complying with other statutory and legal obligations including the right to refuse to perform unsafe work as provided for in the *Occupational Health and Safety Act*, or avoiding actions or inactions that would result in “unprofessional conduct” under the *Health Professionals Act.*

- Denies individuals the fundamental right to freedom of expression by introducing a vague legal concept of “strike threat,” which makes it illegal to canvass the opinion of “employees to determine whether they wish to strike” or to freely express a view that calls for or supports strike action.

Those who are not directly involved with a union, like an academic or public policy commentator, could be prosecuted for suggesting that a strike is the only recourse to protect the public interest, or to draw attention to unsafe working conditions that put the health of workers and the general public at risk.

- Imposes massive and disproportionate penalties on HSAA or other unions engaged in strike or strike threat activity through:
    i) an automatic minimum of three months' suspension of union dues of the entire bargaining unit for the first day or partial day that a strike or strike threat occurs. In addition, the legislation calls for a further one-month dues suspension for each “day or partial day” of a strike or strike threat (see sections 6(1) and (2) of the Act);
    ii) $1 million to be paid into the Court under an abatement order for each day a strike or strike threat occurs and without any maximum amount (see section 9(8) of the Act);
    iii) a fine of $250,000 plus $50 for each day of strike action multiplied by the number of employees involved in the strike action (see section 18 (1) (a) (i) and (ii).

These fines will be imposed regardless of whether the union actually knew of, caused, counseled, or consented to the strike or strike threat. They will also be imposed regardless of whether the union had any control over the employees involved in a strike or strike threat, or how many employees were engaged in a strike or strike threat.

- Imposes a reverse onus on HSAA or other union if it wishes to challenge the penalties. HSAA must first “satisfy” the Labour Relations Board that it gave express instructions against a strike or strike threat before the strike or strike

threat happened (see section 6(3)(a) of the Act). This means that the union has to prove that it had given advance notice against take strike action or making a strike threat regardless of whether it knew of, caused, counseled, or consented to the strike or strike threat.

This makes it effectively impossible for the union to avoid the minimum three-month dues suspension in situations of an illegal strike or other unauthorized strike or strike threat.

- Makes the HSAA liable for the actions of non-members who engage in an unauthorized strike or strike threat, even though such individuals are not under the direction or control of the HSAA.

- Effectively confiscates HSAA funds by holding them in a "liability fund" for up to two years before the employer is even required to make any application to Court for judgment against HSAA for a strike or strike fund. Again, this is regardless of whether HSAA knew of, caused, counseled, or consented to the strike or strike threat, or had any advance notice of the strike or strike threat (see section 11(3) of the Act).

- Automatically imposes personal fines on both HSAA officers or representatives and the individual bargaining unit employees, even if they had advised bargaining unit members not to refuse work, or not stop doing work. If the Labour Relations Board determines that a strike has occurred, the union officers and representatives would still be subject to fines even if the refusal to work or to continue working are undertaken by the members in order to comply with their legal obligations under legislation such as the *Occupational Health and Safety Act* and/or the *Health Disciplines Act.*

NUPGE asserts that the design and intent of Bill 45 is to significantly impair the ability of HSAA and other public sector unions to take collective action in pursuit of common workplace goals on behalf of their members.

In light of the fact that Bill 45:

- Provides overly broad and unprecedented definitions of "strike" and "strike threat."

- Significantly impairs the ability of union officers and representatives to represent and advise their members about their workplace rights, obligations and related issues.

- Imposes fines and penalties of an unprecedented and disproportionate magnitude on the union, as well as on union officials and representatives, for breaches of the Act.

- Imposes a reverse onus on HSAA or other union if it wishes to challenge the penalties by having to prove that it had given advance notice against strike action or making a strike threat, regardless of whether it knew of, caused, counseled, or consented to the strike or strike threat.

- Makes HSAA and other unions liable for millions of dollars in fines and crippling dues-suspensions as a result of actions of third parties beyond the control or the direction of the union.

***NUPGE requests that the ILO Committee on Freedom of Association makes a declaration that Bill 45, along with the blanket prohibition against strikes by public employees contained in PSERA and the LRC, represent a significant violation of the right to freedom of association as set out in the ILO constitution and ILO Convention No. 87—Freedom of Association and Protection of the Right to Organize (1948), which the government of Canada and all Canadian provincial governments ratified in March 1972.***

NUPGE is of the view that the following decisions and principles of the ILO Committee on Freedom of Association concerning past complaints of a similar nature support this request:

> The withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided.
>
> [1996 *Digest*, para. 435; and, 315th Report, Case No. 1935, para. 23; 318th Report, Case No. 2016, para. 101; 324th Report, Case No. 2055, para. 683; 325th Report, Case No. 2090, para. 165; 329th Report, Case No. 2163, para. 705; 330th Report, Case No. 2206, para. 915; 332nd Report, Case No. 2187, para. 723; 335th Report, Case No. 2330, para. 876; 337th Report, Case No. 2395, para. 1188; and 338th Report, Case No. 2386, para. 1253.]
>
> In a case in which the authorities had not transferred to the trade union concerned the dues that had been deducted from the wages of public officials, the Committee considered that trade union dues do not belong to the authorities, nor are they public funds, but rather they are an amount on deposit that the authorities may not use for any reason other than to remit them to the organization concerned without delay.
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> [334th Report, Case No. 2224, para. 143.]
>
> The deduction of trade union dues by employers and their transfer to trade unions is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction.
>
> [1996 *Digest*, para. 326; 300th Report, Case No. 1744, para. 99; and 323rd Report, Case No. 2043, para. 502.]

A considerable delay in the administration of justice with regard to the remittance of trade union dues withheld by an enterprise is tantamount in practice to a denial of justice.

[1996 *Digest*, para. 328; and 323rd Report, Case No. 2043, para. 504.]

The Committee could not view with equanimity a set of legal rules which: (a) appears to treat virtually all industrial action as a breach of contract on the part of those who participate therein; (b) makes any trade union or official thereof who instigates such breaches of contract liable in damages for any losses incurred by the employer in consequence of their actions; and (c) enables an employer faced with such action to obtain an injunction to prevent the commencement (or continuation) of the unlawful conduct. The cumulative effect of such provisions could be to deprive workers of the capacity lawfully to take strike action to promote and defend their economic and social interests.

[1996 *Digest*, para. 594.]

Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offense or fault committed.

[1996 *Digest*, para. 599; and, 303rd Report, Case No. 1810/1830, para. 62; 304th Report, Case No. 1851, para. 281; 310th Report, Case No. 1930, para. 354; 311th Report, Case No. 1950, para. 460; 320th Report, Case No. 2048, para. 718; 329th Report, Case No. 2195, para. 738; 331st Report, Case No. 1937/2027, para. 105; 332nd Report, Case No. 2252, para. 886; 336th Report, Case No. 2153, para. 174; and 338th Report, Case No. 2363, para. 734.]

Fines which are equivalent to a maximum amount of 500 or 1,000 minimum wages per day of abusive strike may have an intimidating effect on trade unions and inhibit their legitimate trade union activities, particularly where the cancellation of a fine of this kind is subject to the provision that no further strike considered as abusive is carried out.

[306th Report, Case No. 1889, para. 175.]

## Analysis of the *Public Service Salary Restraint Act* (Bill 46)

Bill 46 takes away the only dispute resolution mechanism available to some 21,000 members of the Alberta Union of Provincial Employees (AUPE) who work for the Alberta government. The legislation retroactively eliminated a scheduled arbitration process, giving government workers and their union no real input in determining their wages, benefits and working conditions for this round of bargaining. The only “choices” they have been given under Bill 46 are to either accept the employer's last four-year offer consisting of two years of wage freezes, a one percent wage increase for each of the third and fourth years, plus a lump sum payment of $875, or have that offer legislated on them.

HSAA and other public sector unions in Alberta fear the government will introduce similar legislation to unilaterally impose settlements on their members. HSAA's current

province-wide collective agreement with the Alberta Health Services expires March 31, 2014. Notice to bargain has been served, and HSAA anticipates that the threat of similar legislation will be used to suppress legitimate bargaining demands and expectations.

By way of background, AUPE, pursuant to PSERA, served notice on the government on January 4, 2013, to bargain a new collective agreement for 19,000 of its members, who are direct employees of the provincial government. Their collective agreement at that time was set to expire March 31, 2013.

From March 12, 2013 to May 2, 2013, the union and the government were in negotiations for a total of thirteen days, however these negotiations failed to achieve any significant progress towards a new collective agreement. In early May, the union applied to have a mediator involved in the negotiations. Mediation took place in early July, and the mediator notified the Labour Relations Board (LRB) on July 6 that the parties were unable to reach a settlement. AUPE then applied on July 15 to have the dispute sent to a compulsory arbitration board for resolution in accordance with PSERA. In September, the government and union named their nominee to the compulsory arbitration board; and on October 15, both parties agreed on an independent Chair for the arbitration. Arbitration dates were scheduled for February 2014.

On the afternoon of November 27, 2013, the government introduced Bill 46 (and Bill 45) in the legislature. As previously noted, the only prior notice of the legislation came the day before, when the Minister of Human Resources, David Hancock, introduced a motion imposing short time limits on debate allotted for the two Bills. There were no consultations with AUPE, HSAA or other unions on both pieces of the draft legislation prior to their introduction in the legislature.

Bill 46 immediately terminated the scheduled hearings of the compulsory arbitration board. The Bill contained the directive that unless a collective agreement was reached prior to January 31, 2014, the government's last four-year offer consisting of two years of wage freezes retroactive to April 1, 2013, a one percent wage increase for each of the third and fourth years, plus a lump sum payment of $875, would be unilaterally imposed. Furthermore, all other terms and conditions from the previous collective agreement would be automatically imposed without changes, even if both parties had tentatively agreed to changes during negotiations that took place prior to the introduction of Bill 46.

Bill 46 established a deadline of January 31, 2014, which may be extended to March 31, 2014, at the discretion of the government, for the union and government to conclude negotiations for a new contract, and thereby avoid Bill 46 unilaterally imposing a settlement. This artificial deadline suggested that both parties still had the opportunity to freely negotiate a settlement. Any further negotiations that would have taken place

would have been restricted to having the union accept the government's last wage offer as contained in Bill 46.

On January 8, 2014, AUPE filed a constitutional challenge in the Alberta Court of Queen's Bench against Bill 45 and Bill 46 arguing that the two laws violate Canada's *Charter of Rights and Freedoms* by denying its members' rights to freedom of expression, freedom of association, liberty and fundamental principles of justice. The union also filed a bad-faith bargaining complaint against the government with the Labour Relations Board, as a result of the introduction of Bill 46.

The union's statement of claim against Bill 46 also sought an injunction against the legislation. On January 28, the Court issued a temporary stay of Bill 46 in order to allow sufficient time to write a decision on AUPE's application for an injunction. The temporary stay, which will be in force until February 14, 2014, suspends the operation of the legislation until a written decision is issued by the court on AUPE's request for a permanent injunction.

At a press conference held on January 28, the Minister of Human Resources, David Hancock, announced a new government bargaining team had been appointed and promised a new mandate. He also announced that the deadline for negotiations under the *Public Service Salary Restraint Act* was extended to March 31, 2014.

Regardless of whether the government is serious about presenting a new bargaining mandate to AUPE, the fact remains that the possibility of a legislative contract imposed by Bill 46 still remains over the head of AUPE and its members.

HSAA asserts that free collective bargaining cannot take place as long as the threat of an imposed contract from Bill 46 exists. If the government were truly interested in obtaining a negotiated contract with AUPE and other unions in the coming months, it would show good faith by repealing Bill 46.

In light of the fact that Bill 46:

- Increases the restrictions already placed on collective bargaining by PSERA and the LRC, which deny approximately 200,0000 public sector employees the right to strike.

- Terminated compulsory arbitration and thereby took away the only independent disputes settlement mechanism available to 24,000 members of AUPE for settling their collective agreement.

- Unilaterally imposes the last wage offer made by the government during collective bargaining with AUPE.

- Overrides any contract language that the government and the union had already agreed to in negotiations that had taken place for a new collective agreement.

- Creates a climate of bad faith bargaining for negotiations that will take place in 2014 between the government and HSAA and other unions.

***NUPGE requests the ILO Committee on Freedom of Association makes a declaration that Bill 46, along with the blanket prohibition against strikes contained in PSERA and the LRC, and the passage of Bill 45, represent a significant violation of the right to freedom of association as set out in the ILO constitution and ILO Convention No. 87—Freedom of Association and Protection of the Right to Organize (1948)—which the government of Canada and all Canadian provincial governments ratified in March 1972.***

NUPGE is of the view that the ILO Committee on Freedom of Association's previous rulings on Alberta's *Public Service Employee Relations Act* contained in the Committee's Report No. 187 (November 1978) concerning Case No. 893, and in its Report No. 241 (November 1985) concerning Case No. 1234 and Case No. 1247, support this request.

**No consultation with unions affected by Bill 45 and Bill 46**

Although Bill 45 and Bill 46 have a major impact on trade union rights, the government of Alberta did not consult with any representatives of unions prior to drafting the legislation and introducing it in the legislative assembly. Not one organization representing workers in the province was consulted about the need for Bill 45 and Bill 46, or about the impact the legislation would have on working people in Alberta.

The two pieces of legislation were introduced in the legislative assembly without formal consultation with any union. In addition, the government invoked closure before the legislation was ever introduced and allowed for less than five days of debate in the legislature. This shows a complete disregard for the views of the working people and the organizations that represent them.

This process is contrary to the basic principle of the ILO Committee on Freedom of Association regarding the importance of consultation and cooperation between public authorities and employers' and workers' organizations.

As noted in previous rulings of the Committee:

> The Committee has emphasized the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights.
> [241st Report, Case Nos. 1172, 1234, 1247 and 1260, para.144]

> The Committee has drawn the attention of governments to the importance of prior consultation of employers' and workers' organizations before the adoption of any legislation in the field of labour law.
> [277th Report, Case No. 1492, para. 99]
>
> It is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers.
> [246th Report, Case No. 1338, para. 71]
>
> ***NUPGE therefore requests the ILO Committee on Freedom of Association strongly condemns the government of Alberta for introducing legislation that further restricts the freedom of association rights of public employees in Alberta and without any form of prior consultation with unions representing public employees.***

## Conclusion

Taken together, the *Public Sector Services Continuation Act* (Bill 45), and the *Public Service Salary Restraint Act* (Bill 46), as well as the *Public Service Employee Relations Act* and the *Labour Relations Code*, constitute a major violation of workers' freedom of association rights. Because of these four pieces of legislation, Alberta now has the worst legislative framework for public sector labour relations in Canada. Without question, the government of Alberta has rolled back workers' rights and created an unstable labour relations climate.

We trust that this Statement of Evidence clearly sets out the concerns of NUPGE and its Alberta Component, HSAA, regarding Bill 45 and Bill 46. We view these two pieces of legislation to be in violation of the basic principles of freedom of association as set out in the constitution of the ILO as well as in the ILO Convention No. 87.

It is our hope that the Committee will concur with our analysis that Bill 45 and Bill 46 further restrict and violate the ILO's fundamental principles of freedom of association as set out in this Statement of Evidence. Should staff or members of the ILO Committee on Freedom of Association require any further documentation, or have questions regarding this complaint, NUPGE is more than willing to respond to such requests.