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The Lougheed Government, Alberta Government Employees, and the Public Service Employee Relations Act, 1977

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ARTICLE

Delaying, Disarming, and Deceiving the Union: The Lougheed Government, Alberta Government Employees, and the Public Service Employee Relations Act, 1977

Jim Selby

Governments in Canada have frequently called public inquiries in response to manifestations of class and/or labour unrest.[1] One of the objectives of such inquiries has been to defuse and delay conflict, at least temporarily, and to strengthen the appearance of neutrality of the state in labour relations.[2] Postponement of conflict has been a hallmark of Canadian labour law and labour relations practices generally.[3]

1. For example, see the Royal Commission on the Relations of Labour and Capital in 1886, the Royal Commission on Industrial Disputes in the Province of British Columbia in 1903, the Royal Commission on the Coal Mining Industry in the Province of Alberta of 1907, the Commission to Inquire into and Report upon Industrial Relations in Canada in 1919, and the Woods Task Force on Labour Relations in 1966.

2. Joan Sangster, "'We No Longer Respect the Law': The Tilco Strike, Labour Injunctions, and the State," *Labour/Le Travail* 53 (Spring 2004): 71. Also, consider E.P. Thompson's dismissal of government commissions overall: "Blue Books in the early nineteenth century served many purposes, but reform comes low on the list. Parliamentary investigations took place as a routine response to petitions; as a means of 'handling and channeling' discontent, procrastinating, or fobbing off ill-behaved M.P.s or purely from an excess of utilitarian officiousness." E.P Thompson, *The Making of the English Working Class* (London: Penguin Books, 1963), 375.

3. Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto: University of Toronto Press, 2004) provides a comprehensive examination of labour law that suggests "state repression of industrial conflict was an enduring feature" of Canadian law, 88. The ban on strikes and lockouts

Jim Selby, "Delaying, Disarming, and Deceiving the Union: The Lougheed Government, Alberta Government Employees, and the Public Service Employee Relations Act, 1977," *Labour/Le Travail* 75 (Spring 2015): 75–100.

For workers engaged in collective actions, postponing and delaying conflict – whether through a mandated cooling off period, or various conciliation processes, or while awaiting the outcome of public consultations or inquiries – has only rarely improved outcomes.[4] However, despite any cynical suspicions labour may harbour over the actual intent of the state in delaying labour conflict by way of public inquiries, unions generally participate in the process as if it provided a legitimate opportunity for gains for working people.

That was certainly the case in Alberta in 1975 when the Civil Service Association of Alberta (CSA) chose to fully participate in a government task force on provincial public sector labour relations. That task force was called as a direct consequence of a series of increasingly militant strikes by CSA members the previous year. To support its participation in this public inquiry, the union restrained its members' job actions through the election in the spring of 1975. Following their re-election, however, the Lougheed Conservatives proceeded to draft and introduce the markedly anti-worker Bill 41, the Public Service Employee Relations Act (PSERA), in the legislature on 28 April 1977.

Internal government documents from the period suggest that the entire task force process was a cynical (and successful) attempt to defuse class hostilities during the election and to disarm the union for the legislative assault to come. The fact that the government and union nominees to the task force issued incompatible recommendations permits a comparison of the final legislation to the positions of the government and union on key issues. The ultimate product of this process, Alberta's PSERA, both supports and suggests a slight amendment to Panitch and Swartz's analysis of the post-World War II extension of union rights in Canada and the subsequent withdrawal of those rights.[5]

Finally, the outcome of the struggle between provincial employees and the government of Alberta over the right to strike, which was the heart of the dispute, suggests that public sector unions may be ill-served by a tactic of restraining militant actions by their members during disputes with governments.

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during compulsory conciliation established by the Industrial Disputes Investigation Act of 1907 is carried forward in PC 1003 in 1943 and in the 1948 Industrial Relations and Disputes Investigation Act that became the blueprint for most provincial labour laws.

4. Warren Caragata, *Alberta Labour: A Heritage Untold* (Toronto: James Lorimer & Company, 1979), 37; Fudge and Tucker, *Labour Before the Law*, 56. The basic argument is that there were no mechanisms preventing employers from engaging in a wide array of activities undermining the union during compulsory conciliation, such as firing and blacklisting union activists, hiring strikebreakers, and intimidating and coercing union members – all to the detriment of union strength in the dispute.

5. Leo Panitch and Donald Swartz, "Toward Permanent Exceptionalism: Coercion and Consent in Canadian Industrial Relations," *Labour/Le Travail* 13 (Spring 1984): 133–157.

Background: the Evolution of Alberta Government Employee Labour Relations

The evolution of the relationship between the province and its employees had followed a typical path for Canadian provincial and federal "civil servants." The Public Service Act (S.A. 1906 Chapter 4) was passed by the first sitting of the Alberta Legislature to regulate the Alberta public service. Section 27 of the Act prohibited collective bargaining or even individual bargaining over wages:

> 27. Any application for increase of salary made by any employee in the public service or by any other person on his behalf with such employee's consent or knowledge shall be considered as a tendering of the resignation of such employee.[6]

As well as making any request for a wage increase grounds for dismissal, the Act also provided management the right to compel unpaid overtime, arbitrarily determine hours of work, and unilaterally suspend employees without pay if the employer determined the employee had acted improperly or been negligent in their duties.[7] The inability of provincial employees to address their wage issues in any fashion was exacerbated by runaway inflation during World War I. The cost of living rose by 65 per cent between the start of the war in 1914 and the end of 1917. By 1920, prices were double their pre-war levels.[8] However, during the war, wages for public employees had been frozen, and in the recession immediately following the end of hostilities, the government had actually cut wages in some instances.[9]

As a consequence, provincial employees created the CSA and registered it under the Societies Act in 1919. The government refused to bargain with the association and successfully limited it to a strictly advisory role on public service issues, generally through a joint council of three ministers and three CSA delegates. The council discussions did not in any way constitute formal negotiations or bargaining; ultimately, the government simply enacted whatever terms and conditions it wanted.

The government generally used the council and its authority as employer to dominate the affairs of the CSA, which little resembled a real trade union.[10] By 1938, the Social Credit government of the day was satisfied enough with the joint council model that it amended the Public Service Act to replace the section banning collective bargaining with a section elevating the informal recognition of the CSA to a statutory recognition of both the CSA and the joint council. The new act read:

6. *Statutes of the Province of Alberta, 1906*, Chapter 4, "An Act Respecting the Public Service," 26.

7. *Statutes, 1906*, 21–26.

8. Caragata, *Alberta Labour*, 61

9. Caragata, *Alberta Labour,* 83.

10. Caragata, *Alberta Labour*, 83.

23. For the purpose of securing the greatest measure of co-operation between the Government in its capacity of employer and the members of the public service in matters affecting the service, the Lieutenant Governor in Council may constitute a Joint Council, which shall be known as the "Alberta Civil Service Joint Council" and shall consist of 6 members, to be appointed as to one-half by the Lieutenant Governor in Council and as to the other half by the Civil Service Association of Alberta, and the Joint Council shall have such functions and shall conduct its proceedings in such manner as may be from time to time prescribed by the Lieutenant Governor in Council.[11]

The purpose of the CSA had originally been to try to improve working conditions and wages for provincial employees. Following this statutory recognition, the organization was mandated only to advise and to pursue a more cooperative relationship between employer and workers. Although there were further revisions of the Public Service Act in 1947, 1954, and 1962, the role of the CSA OF A under the Social Credit dynasty (1935–1971) continued to be advisory only. Opposition to such company unionism within the civil service was muted by the prevalence of patronage appointments in a restricted public service before the 1960s.[12] However, against a backdrop of growth of the public sector beyond levels where patronage appointments could constitute more than a fraction of government workers, accelerating union organizing and growing militancy among federal public sector workers and Crown and health care employees in other provinces in the 1960s, the Alberta Social Credit government finally permitted a weak form of collective bargaining to its employees.[13] In 1965, the government amended the Public Service Act to provide for collective bargaining leading to a collective agreement. The CSA was given sole jurisdiction to represent all provincial employees, although direct employees of the Crown (referred to as the general departmental service) were treated differently than employees of semi-autonomous boards and agencies (for example, the Alberta Liquor Control Board, which at the time owned and operated all liquor stores in the province).

There was much less to this new collective bargaining than the workers had hoped, and in practice, the superficially greater rights to bargain of workers in Crown agencies were meaningless because the provincial government retained the right to simply impose whatever contract it wanted for both departmental workers and Crown agency workers. If bargaining reached an impasse within the general departmental service, the Executive Council (Cabinet) could unilaterally impose settlement terms. Employees of autonomous boards and agencies referred disputes at impasse to advisory mediation boards. However,

11. *Statutes of the Province of Alberta, 1938* (3rd Session), Chapter 41, "An Act to Amend the Public Service Act," 215.

12. Alvin Finkel, *The Social Credit Phenomenon in Alberta* (Toronto: University of Toronto Press, 1989), 131–132.

13. Bryan Palmer, *Working-Class History: Rethinking the History of Canadian Labour, 1800–1991* (Toronto: McClelland & Stewart, 1992), 321–323.

the recommendations of those mediation boards were simply advisory, with government retaining final authority on items in dispute.[14]

In 1968, the Public Service Act was rewritten, and all reference to public employees outside of the general departmental service was removed to a new Crown Agencies Employee Relations Act. A new Civil Service Association of Alberta Act constituted the CSA as a statutory corporation, replacing the old body which had been a registered society.[15] In 1970, the Public Service Act was further amended to provide members of the general departmental service with an advisory mediation step in the event of a bargaining impasse.

The Social Credit amendments of the 1960s did little to defuse the growing and deep-seated discontent among provincial employees. The government still had complete control of wage settlements, thereby creating a legislative straitjacket that only gave provincial employees the superficial trappings of the free collective bargaining they sought. "The members of the CSA chafed under such a pseudo-collective-bargaining regime."[16] Part of employee frustration was the dominant influence of upper government managers on the association itself, a relationship that troubled both the labour movement[17] and the incoming Conservative government in 1971:

> The advent of Collective Bargaining in the Public Service requires the identification and emergence of two distinct groups namely, a Bargaining Unit and a Management group. The Management group has been closely linked with the Civil Service Association, so much so that high ranking department officials still proudly parade their C.S.A. affiliation. This historical situation will be objectified when the management compensation plan is implemented. Hopefully the two forces, collective bargaining for employees in the bargaining units and an excluded managerial group combined, will reduce considerably the curse of paternalism on one hand and the autocratic treatment of employees on the other.[18]

The government's objective in granting employees a very limited form of collective bargaining seems to have been aimed more at splitting the upper management away from regular workers in the CSA by giving them a separate compensation plan rather than at improving the lot of front-line workers. By 1971, provincial employee unhappiness over their situation and lack of genuine bargaining rights had become an issue in the upcoming provincial election. Then Leader of the Official Opposition, Peter Lougheed, in a

14. *Statutes of the Province of Alberta, 1965*, Chapter 75, "An Act to Amend the Public Service Act, 1962," 347–355.

15. *Statutes of the Province of Alberta, 1968*, Chapter 11, "The Civil Association of Alberta Act," 32–35 and Chapter 17, "The Crown Agencies Employee Relations Act," 49–55.

16. Alvin Finkel, "The Boomers Become the Workers: Alberta 1960–80," in Alvin Finkel, ed., *Working People in Alberta: A History* (Edmonton: Athabasca University Press, 2012), 144.

17. Ibid.

18. Provincial Archives of Alberta (hereafter PAA) GR1981.088 Box 2, Item 9, M. Hazel document appended to memo on Government Letterhead from J.E. Faries, Administrative Officer to all Department Personnel Officers 12 October 1971.

letter to the President of the CSA promised that "a Progressive Conservative Government would move very quickly to give the Civil Service a much broader and definitive Act which would give the members the same basic bargaining rights enjoyed by organized labor in the Province."[19]

Following the Conservative electoral victory in the 1971 election, the Lougheed government did move very quickly but not to give public employees the same bargaining rights enjoyed by other workers. The government amended both the Public Service Act and the Crown Agencies Employee Relations Act to force compulsory binding arbitration as the sole disputes resolution method during collective bargaining. This was clearly not what the CSA understood by a promise to give provincial employees the same bargaining rights enjoyed by other organized workers in the province. Most particularly, the association had understood that promise to include extending the right to strike to their members.

The organization began consciously attempting to transform itself into a *bona fide* union. On 1 October 1973, the CSA affiliated to the Canadian Labour Congress. However, further progress toward independent union status ran into a legal barrier. The 1968 transformation of the CSA from an independent society to a statutory body had left the capacity to change the organization's constitution entirely in the hands of the legislature. In 1973, the President's Report from the 53rd Convention read:

> Also on the subject of the Association's Constitution and Bylaws, legal advice that has been obtained very recently has been to the effect that the Association has only the right to make bylaws. Such bylaws may be amended only by annual or special conventions. The Constitution of the Association is in fact The Civil Service Association of Alberta Act. Thus the Constitution can only be amended by application to the Provincial Legislature. This legal advice then points to the fact that what we now call our Constitution is, in fact, redundant, although the intent of many of the sections are paramount to us.[20]

Over the next two years, the association persistently demanded that the CSA Act be repealed and that their members be put under the Alberta Labour Act. The CSA pointed out the anomalies in existing legislation and showed the lack of a coherent philosophy of industrial relations policy behind much of the legislation contained in the Public Service Act, the Crown Agencies Employee Relations Act, and the Alberta Labour Act. Particular reference was made to the apparent haphazard and arbitrary placement of provincial employees in one of the three acts. For example, non-academic employees of colleges were covered by the Albert Labour Act while non-academic employees at universities were under the Crown Agencies Act, and all employees at

19. Alberta Task Force on Provincial Public Service Labour Relations, (hereafter Alberta Task Force), Report of the Alberta Union of Provincial Employees Representatives on the Task Force, 1 November 1976, Item 1, Appendix A, Letter from Peter Lougheed, Leader of the Opposition to Mr. R.C. Smith, President of the Civil Service Association of Alberta, 13 August 1971.

20. CSA Fifty-Third Convention, Edmonton, Reports and Resolutions, President's Report, 29, 30 November, 1 December 1973, 19.

technical institutes were under the Public Service Act. Similarly, employees at one Crown agency, Alberta Government Telephones, were under the Labour Act while those at another, the Alberta Liquor Control Board, were under the Public Service Act. These and other apparently contradictory allotments of rights to similar employees were the consequence of historic legislative amendments over many years.

Above all, the association equated the right to free collective bargaining with the unfettered right to strike as enjoyed by other organized workers in the province.[21] Matters came to a head between the CSA conventions of November 1973 and November 1974. During that period, there were four separate "illegal" strikes by provincial employees. First, the Tradesmen and Allied workers struck against a reclassification that would have reduced wages, followed by a Health and Social Development workers' strike against a change to long-standing statutory holiday provisions. The union negotiated settlements to both disputes that met workers' objectives. A ten-day strike by Liquor Control Board workers beginning on 2 April 1974 led to substantial negotiated wage increases. The job actions culminated in a massive three-day strike by 12,500 General Service workers on 1, 2, and 3 October 1974 protesting an arbitrary government wage increase announced six days before negotiations for an interim pay increase (a wage re-opener that was part of the existing collective agreement) were scheduled to begin. The union won a much larger pay increase than the government had announced. For the CSA, these strikes in defiance of the government and its legal regime were considered as a rite of passage. According to CSA President Bill Broad: "This year the C.S.A. became the union of provincial employees in Alberta." [22]

Despite the job actions, the CSA continued to be stonewalled on the legislative front. The association presented a brief and met with the Minister of Manpower and Labour but got no results. It had twice written the premier requesting a meeting with Cabinet, but had received no answer. When the union asked that the CSA Act be repealed because the organization was at a constitutional impasse, the government ignored the request. President Broad ruefully reported to the 1974 Convention: "Indeed, your officers got the brush off." [23]

A major confrontation appeared imminent when the CSA passed the following resolution at its November 1974 convention:

Due to widespread discontent and disaffection expressed by the Civil Service Association of Alberta members and in order to avoid a severe disruption of government services, the President be instructed to urge the Premier to ensure that all government employees be

21. CSA Fifty-Fourth Convention, Reports and Resolutions. 14, 15, and 16 November 1974, Calgary, Report of the President, 8–16.

22. CSA Fifty-Fourth Convention, 8.

23. CSA Fifty-Fourth Convention, 12.

brought under the protection of the Alberta Labour Act during the next session of the legislature. [24]

The deteriorating relationship between the government and the members and leadership of the CSA – as demonstrated by the rash of strikes and the increasingly anti-government tone of the association's internal discourse and public documents – finally drew a response from the Lougheed government in late 1974. The government proposed a joint task force to investigate and propose solutions to the growing provincial public service labour relations crisis. This task force would ultimately be credited with the basic foundation of Bill 41, the PSERA of 1977.

The Alberta Task Force on Provincial Public Service Labour Relations

THE CSA HAD ORIGINALLY demanded a Royal Commission to examine the labour legislation under which its members worked. The government countered with the offer to establish a task force made up of CSA and government representatives. The association saw flaws in the government's proposed task force from the beginning:

> If a task force is formed, it would be made up of CSA and government representatives, who would present their recommendations to the government. A Royal Commission could be made up of persons independent of either the CSA or the government that might present terms for new legislation. [25]

From the association's perspective, the recommendations of a Royal Commission completely unattached to the government would have more credibility with the public and would be more likely to compel government action. The task force, by its bipartisan nature, could only recommend those items on which both sides were in accord and would be far less likely to meet the desires of public employees. Regardless of its trepidation, the association finally agreed to participate in the government's proposed task force. President Broad agreed to a meeting (which took place on 3 February 1975) between officers of the CSA and the premier and concerned government ministers to hammer out the details.

Formation of the task force was announced in the Legislative Assembly on 11 February 1975. The task force was composed of four members: two from government staff: Jim Dixon, Director of Employee Relations (later replaced by E. Anderson) and John Ife, Director of Special Projects; and two appointees from the CSA: W.C. Ives, Director of Membership Services (later replaced by Alberta Union of Provincial Employees (AUPE) Treasurer Roy White) and Bill Finn, Executive Assistant to the President. The following terms of reference for the task force were agreed upon:

24. CSA Fifty-Fourth Convention, 145.

25. Civil Service Association of Alberta, *Perspective* (November 1974): 1.

Purpose: To review the legislation governing the relationship between provincial employees and their employers.
To recommend changes in legislation necessary to achieve a system of Labour Relations, which is in the best interest of the employees and of the citizens of Alberta.

Scope: Legislation includes but is not limited to The Public Service Act, The Civil Service Association of Alberta Act, The Crown Agencies Employees Relations Act and The Alberta Labour Act.
Provincial employees include employees of the Province and of Provincial Boards, Agencies and Commissions.

Reporting: Recommendations to be made to the Minister responsible for Personnel and to the President of the Civil Service Association of Alberta as expeditiously as possible.[26]

At first glance, the task force appeared to be a genuine effort on the part of the government to work cooperatively with the union to address the demonstrable labour relations crisis in the provincial public sector. The members travelled across Canada meeting public sector labour and government representatives from every province except Quebec and gathering information on public sector labour relations regulations and practice from the other jurisdictions.[27]

In Alberta, a call for submissions to the task force did not attract much attention. In total, the task force only received eight written submissions during its twenty months of deliberations: four from hospital management groups and one from the provincial Workers Compensation Board management. From the labour side, there was one from the AUPE – the new union formed from the CSA in 1976 immediately following the repeal of the CSA Act.[28] As well, there were submissions from the Alberta Federation of Labour and from a group of disaffected instructors at the Northern Alberta Institute of Technology who wanted out of the new union.[29]Although the CSA had joined the Canadian Labour Congress on 1 October 1973, that membership was accomplished only after lengthy debate as a consequence of the Canadian Union of Public Employees (CUPE) opposing the CSA's entry because CUPE asserted that provincial employees were within their jurisdiction.[30] It is possible that the lack of

26. Alberta Task Force, *Report of the members appointed by the government*, 28 October 1976, 2.

27. Alberta Task Force, *Report of* AUPE, 1 November 1976, Appendix B.

28. As part of the Task Force process, the government repealed the CSA OF A Act on 14 June 1976. The same day, the Alberta Union of Provincial Employees was registered with the Societies Act and became the legally recognized successor organization to the CSA. Although this made AUPE the successor to the CSA, it still did not give it trade union status under the Alberta Labour Act. More than a year later, the AUPE ceased being registered under the societies Act and became registered as an official trade union in Alberta on 17 November 1977.

29. Alberta Task Force, *Report of* AUPE, 1 November 1976, Appendix C.

30. CSA Fifty-Third Convention, Edmonton, Reports and Resolutions, President's Report, 29, 30 November, 1 December 1973, 21.

broader labour participation in the task force was a consequence of both the very recent entry of the CSA into the official labour movement and lingering rancour from the attempt by CUPE to block that entry. However, the lack of participation in the task force by political or social organizations is puzzling, although it may reflect the limited presence of progressive civil society organizations in Alberta at the time outside the trade union movement. The union itself found the lack of submissions "surprising."[31]

The task force released an interim report in September 1975. This report recommended the repeal of the CSA Act, thereby clearing the legislative barrier to the CSA becoming a full-fledged trade union. The task force duly sent a letter to Provincial Treasurer Mervin "Merv" Leitch on 29 October 1975 to that effect. The recommendation was subject to a guarantee from both the government and the union that transition provisions ensure an orderly transfer of bargaining rights to a successor organization to the CSA concurrent with the repeal. Further, it was dependent upon a commitment from the union that acknowledged that this would in no way affect the current provisions of the Public Service Act or the Crown Agencies Employee Relations Act.[32] Following this advice, the government repealed the Act on 14 June 1976, passing the authority, property, duties, and obligations of the CSA OF A to the AUPE, which was created the same day under the Alberta Societies Act.[33] This cleared the legislative barrier that had blocked the right of the association to reconstitute itself as a legitimate union.

However, the repeal of the CSA Act was to be one of the very few examples of agreement between the two sides of the task force. The union side had badly wanted public hearings in Alberta; the management side vetoed the proposal. The union position was that Lougheed should honour his 1971 commitment to provide public employees with the same rights as other unionized workers in Alberta by simply putting them under the Alberta Labour Act with everyone else. The management team refused to even consider that option. At the end of the twenty month process when the task force issued its final report, the two sides were so far apart that they issued separate reports bound together in a single volume in the legislature library.

When the separate reports were finally issued in November 1976, an accompanying covering letter noted six conclusions the two sides had in common. Of the six, four were simply provisions that were common coin in labour laws across the country (and indeed present in the Alberta Labour Act of the day): a prohibition of unfair labour practices, a provision for certifying bargaining agents, insertion of an optional mediation step into bargaining, and

31. Alberta Task Force, *Report of* AUPE, 1 November 1976, 23.

32. Alberta Task Force, *Report of government*, 28 October 1976, Appendix A, Letter to C.M. Leitch, 29 October 1975.

33. *Statutes of the Province of Alberta, 1976*, Chapter 9, "The Civil Service Association of Alberta Repeal Act."

a recognition of the legally binding nature of collective agreements. A fifth conclusion – that all provincial employees be covered by the same legislation – was ironic given that, for the union members, that meant everyone would be under the Alberta Labour Act, and for the management members, it meant continuation of exceptional legislation for public employees.[34]

The joint union-government cover letter to the two opposing reports underlined the inability of the two sides to reach any common understanding:

> We, the members of the Task Force on Provincial Public Service Labour Relations, herewith advise that we have been unable to reach agreement on a joint report. We therefore attach two reports representing the separate views of the Union members and of the government members.
>
> This separation is due to a basic disagreement regarding the comparison between public service employment and employment in the private sector.[35]

This story of sadly irreconcilable differences made up the official government narrative. It suggested that, despite the willingness of the government to cooperate with labour in the provincial public sector, at the end of the undertaking the two sides were so far apart that a compromise or negotiated resolution of the differences was impossible. However, the fact that there was no common ground on any of the major issues in the task force report did not prevent the government from using the task force to support the legitimacy of their solution to the public sector labour relations crisis in the province.

From Task Force Process to New Labour Laws

When Provincial Treasurer Merv Leitch introduced the government's new public sector labour legislation, the PSERA, in the legislature on 28 April 1977, he immediately cited the task force as its provenance, ignoring the fact that the recommendations of the two sides of the task force were mutually incompatible:

> This Bill arises from the reports of the task force on public service labor relations, which the members of the Assembly will recall were filed in the Assembly in November, 1976.
>
> The prime purpose of the bill is to implement the changes on which all members of the task force agreed, and to implement substantially all the additional recommendations made by the government appointed members of the task force.[36]

During the debate in the Legislative Assembly on Bill 41, Leitch was insistent that not only was the task force an indication of the commitment of the government to work with the CSA OF A and its successor organization, the AUPE, but that discussions with AUPE were ongoing throughout the process:

34. Alberta Task Force, Cover letter signed by all four members, 1 November 1976, 1.

35. Alberta Task Force, Cover letter signed by all four members, 1 November 1976, 1.

36. Alberta Hansard, 18th Legislature, Third Session, 28 April 1977, 1031.

I've already covered as part of the consultation discussion process the formation of the task force and its recommendations which were made public on November 1, 1976. Shortly after that report was made public, in fact I believe it was on December 8, 1976, it was discussed at some length at a meeting with the Alberta Federation of Labour, and the Executive Council. At that meeting the Alberta Federation were advised that the government was firm in its view that there ought not to be any expansion of the right to strike.

As I mentioned during question period today, Mr. Speaker, in early March of 1977, the labor relations committee of cabinet was joined by the Premier, and we had a lengthy meeting with the president and I believe about 30 senior members of the Alberta Union of Provincial Employees….

As I recall, I pointed out that in my view very important changes were being proposed that would be of very appreciable advantage to the members of the civil service. We welcomed their input and suggestions on procedural matters and on anything that might be covered in the bill. That invitation was accepted and there were meetings, as I understand it, between Mr. Broad and the Public Service Commissioner during which there were discussions about the contents of Bill 41.

In addition to those meetings, Mr. Speaker, Mr. Broad met with the Premier privately on April 21, 1977 to discuss the contents of Bill 41. And again as I indicated during question period today, that consultative process is still going on. I plan to meet with Mr. Broad and his council tomorrow to get the union's suggestions for possible changes in the bill on a number of matters, although I do not anticipate there being any discussion on the main point of principle of the right to strike.[37]

However, there are significant reasons to question just how much cooperation or consultation actually took place between the government and union members of the task force and, in the larger picture, between the government and AUPE/CSA during the process leading up to the passage of Bill 41 through the Legislative Assembly in May, 1977.

Evaluating the Consultative Process for Bill 41

THE GOVERNMENT MADE two claims of consultation with the union in the time between the public sector strikes of 1974 and the creation and enactment of the PSERA in 1977. Their primary claim on the record in Hansard was that the Task Force on Provincial Public Service Labour Relations represented twenty months of collaborative effort and consultation in preparation for drafting Bill 41. Their second claim was that there were ongoing meetings with AUPE officers after Bill 41 was originally drafted.

However, a closer look at government documents of the day casts doubt on exactly how willing to compromise, negotiate, or collaborate, the government actually was during the task force proceedings, and whether its motivation was ever to collaborate with the union.

One of the criticisms levied against the task force during the debate on Bill 41 was a suggestion by New Democrat Leader Grant Notley that the task force

37. Alberta Hansard, The 18th Legislature, Third Session, 10 May 1977, 1247.

was simply a delaying tactic to prevent public sector job actions during the 1975 provincial election campaign:

> Mr. Speaker, I noticed with a certain amount of admiration for political skill that in view of the concern that had developed over the first three and a half years of the now government, in 1975 we had the appointment of the task force just a matter of a few days — almost a few hours — before the Legislature was dissolved.
>
> The appointment of the task force was probably an excellent step by the government. But it was a highly adroit step as well, because both the government and at that time the CSA were equally represented. Then shortly after the appointment of the task force, when this issue was diffused, the writs were issued.[38]

The sudden, unexplained reversal of position by the government in proposing a task force less than a month after the President of the CSA had bitterly complained that the government was deliberately ignoring the union's repeated requests for a Royal Commission does seem to support Mr. Notley's suggestion – as does the fact that almost immediately after the task force was officially introduced to the Legislative Assembly, the writ was dropped for the 25 March 1975 general provincial election.

The government's real agenda surrounding the task force is best explained by their own internal documents. In a 5 December 1974 memo from Public Service Commissioner K. J. Robertson to Dr. A. E. Hohol, the Minister of Manpower and Labour, Robertson specifically discussed the government's intention to use the task force process to delay potential labour conflict. He also recommended deliberately obscuring the government's position on the contentious issue of the right to strike for provincial public employees in order preserve the task force process:

> 1. The timing of the task force review is very important – we do not want to provide the potential for an impasse at an inappropriate time during the review. In our view we should endeavour to commence the task force review at the latest date possible, taking care to ensure that it commences early enough to satisfy Mr. Broad's need to show results. Consequently, the response to Mr. Broad's letter should be made at the latest reasonable date – perhaps later next week. The suggestion of a January meeting will further delay the establishment of the task force.
>
> 2. Mr. Lougheed may wish to re-iterate Government's position on the right to withdraw services in the Provincial Public Service which he has done in the past – specifically on May 16th, 1972 in the Legislative Assembly. This position was re-iterated by yourself in a June 13th, 1974 response to an earlier request of Mr. Broad's to establish a Royal Commission. We believe side-stepping the issue at this stage may be a better course in order to ensure that the joint committee does commence its deliberations.[39]

The government's desire to prevent the right to strike issue from derailing the task force was again addressed in an analysis of the effect of a letter from

38. Alberta Hansard, The 18th Legislature, Third Session, 10 May 1977, 1250.

39. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, Memo from K.J. Robertson to Dr. A.E. Hohol, 5 December 1974.

CSA President Bill Broad to the premier on 14 January 1975 in which the union again asserted its understanding that the premier had previously promised it the right to strike:

Effect of Broad's Letter of January 14th on Terms of Reference for the Task Force on Legislation

1. Broad's reply regarding the "right-to-strike" leaves two alternatives:
   i. response [sic] to the memorandum to emphasize that the government has been consistent and that the C.S.A. is deliberately misreading the August 13, 1971 letter. OR
   ii. agreement that the argument is to some extent redundant since it deals with past events, and passing of the issue to the Task Force.
2. Pursuit of alternative A may bring the matter to a head on February 3rd. This may result in:
   i. Personal confrontation between the Premier and Broad.
   ii. Rejection of the "right-to-strike" and consequent reduction of the task force terms of reference to a point which is publicly unacceptable to Broad.
   iii. Seizure of this issue to unite job action and media campaigns during the period following February 3rd.
3. Pursuit of alternative B allows:
   i. The Task Force to proceed thus denying the C.S.A. an issue during February and early March.
   ii. Permits Broad to claim some advance by giving (via the Task Force) the right to strike to some provincial employees.
   iii. Permits the Premier to maintain the integrity of his position by withholding the right from the general departmental service.[40]

A further iteration of that analysis was forwarded to Premier Lougheed by Dr. A.E. Hohol, the Minister of Manpower and Labour, on 21 January 1975 with his personal support for alternative B: "I would recommend the approach outlined in 1(b) above. This would allow the Task Force to proceed and take away from the C.S.A. a major issue during February and early March."[41]

The government, unsurprisingly, chose option B and on 23 January 1975 Attorney General Merv Leitch (he was named provincial treasurer after the 26 March 1975 election) put the finishing touches on a letter composed by Minister Hohol that was to be sent out under the premier's signature to C.S.A. President Bill Broad. It read, in part: "I regret that we are still in disagreement over the meaning of my letter of August 13, 1971. However I suggest that we agree to have this aspect of the relationship between government employees and the government examined by the Task Force which will be studying the entire question of employee rights."[42]

40. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, unsigned memo, 17 January 1975.

41. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, memo from DR. A.E. Hohol to P. Lougheed, 21 January 1975.

42. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, memo from Merv Leitch to Dr. A.E. Hohol, 23 January 1975.

The union took this, as the government clearly intended it to with its careful phrasing of the letter to CSA President Broad, to mean that the task force would have a carte blanche to examine the possibility of extending the right to strike to provincial employees. With the contentious "right-to-strike" issue defused, if not settled, the task force was a go.

The careful delay until February 1975 of the formation of the task force and the delicate crafting of its mandate to obfuscate the government's real position on the right to strike issue did, in fact, produce labour peace during the 1975 provincial election. The absence of provincial employee strikes, picketing, marches, or demonstrations during the election period may or may not have affected the final results – but the Lougheed cabinet clearly thought that labour unrest would have a negative impact on their prospects. As it was, the Conservatives won a massive electoral victory in this, their first election as the incumbent government. The Lougheed Conservatives won 69 of 75 seats and increased their share of the popular vote to 62.65 per cent.[43]

As important as it was, however, the government's full agenda for the task force was more complex than simply delaying conflict until the election was over. On 3 February 1975, a government briefing note provided a detailed inventory of the government's full intentions for the task force to each government participant in the crucial meeting that same day with the representatives of the CSA to negotiate the terms of reference and reach a final agreement on the makeup of the task force:

1. The Need

(a) The C.S.A. is becoming more militant in response to:
  (i) members' expectation that salaries will be competitive with major unionized employers rather than the average of all employers.
  (ii) escalating inflation.
  (iii) granting of increased bargaining rights to other public employees.
  (iv) jurisdictional disputes with C.U.P.E.

(b) There appears to be public support for some change.

(c) The C.S.A. may be obliged to initiate job action if no response is made to their requests for change.

(d) A task force permits the government to manage change rather than react to it.

2. Our Objectives

(a) To avoid job action if possible.

(b) To retain compulsory arbitration as the method of settling disputes with employers of government departments.

(c) To produce an orderly framework for employee-employer relations which removes anomalies and recognizes current practices.

(d) To minimize the risk of whipsaw bargaining caused by the involvement of several small public employers (e.g. Alberta Housing).

43. Elections Alberta, General Election Results 26 March 1975, http://www.elections.ab.ca/Public%20Website/746.htm#1975 (12 June 2014).

(e) (To protect the jurisdiction of the C.S.A. as being (vs. CUPE) the organization with which we prefer to deal.[44]

The clear initial statement of the government's short-term objective of avoiding labour unrest during the election is followed by very explicit long-term objectives for government's relations with its own employees. First, there is no doubt about the government's position on the right to strike for provincial employees. There was to be none. Secondly, the government wanted to limit both the number of unions and the number of different bargaining units with which it would have to deal. There is also an explicit undertaking to preserve the status quo, to protect the current labour relations practices where decisions over most important labour relations issues were in the hands of the government.

Thirdly, the government wanted to protect the CSA from any incursions from the CUPE. Throughout the process of stage managing the task force and drafting the new public sector labour laws, there was a clear government concern over the continued well-being of both the CSA and of the reputation of its President Bill Broad. For example, the government briefing note of 3 February 1975, under the heading Purpose of the Meeting, notes that the "meeting provides Mr. Broad with 'proof of action' in response to pressure from his membership."[45]

This concern may raise the spectre of direct collusion between the government and the leadership of the CSA, but there are far more likely explanations for the government's behaviour. First, CUPE had a reputation in Alberta at the time for being an extremely militant union.[46] Second, the CSA had a very long history as a pliable, timid, conservative, employer-dominated organization.[47] Consequently, the long-standing practice by Canadian governments of encouraging responsible unions and discouraging militant and radical unions[48] more than adequately explains the government's preference for the CSA over CUPE. Furthermore, Bill Broad was first elected in 1972 campaigning against the close relationship between the association and the government.

44. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fond, government note, 3 February 1975, 1.

45. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, Memo from K.J. Robertson to Dr. A.E. Hohol, 5 December 1974. See also PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, unsigned memo, 17 January 1975; and PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, government note, 3 February, 1975.

46. Alvin Finkel, "The Boomers Become the Workers," 148, 149.

47. Alvin Finkel, "The Cold War, Alberta Labour, and the Social Credit Regime," *Labour/Le Travail* 21 (Spring 1988): 143–146.

48. Fudge and Tucker, *Labour Before the Law,* 18, 45, 49. There is extensive discussion of the state and courts fostering responsible unionism and rejecting radical unions throughout. It is a central theme in the book.

A staunch British union activist, he may not have been a radical, but he was certainly no friend of the Conservative government.[49]

There is also an explicit reference in the 3 February 1975 briefing note that suggests the government saw the task force as a form of negotiations with the union rather than an open-ended consultation process: "The task force will be negotiations under another name, the composition should reflect this and should enable the Cabinet to monitor progress."[50] This does not appear to be the understanding of the process by the union. If this were negotiations under another name, then all of the fact-finding exercises and taking of submissions by third parties would simply have been window dressing. There would have been little reason for the union to attempt to get public hearings set up across the province, and the details of the cross-Canada fact-finding tour would have been little more than a footnote in the final report/agreement. In fact, the government task force members quickly summed up the fact-finding in a little over two pages of their final report with the conclusion that there was no real consensus on public sector bargaining or dispute resolution. The bulk of their report is a careful set of recommendations for legislation under ten different headings covering everything from dispute resolution (binding arbitration, no right to strike) to legislated exclusions from the bargaining unit.[51]

The union task force report, on the other hand, is a lengthy argument for just one recommendation: that all provincial employees be put under the Alberta Labour Act.[52] If this was negotiated, there was no sign of it in the task force reports. There is no evidence of either side altering their positions, or of 'signing off' on insignificant items or even of the union representatives analyzing and arguing against any of the government representatives' 37 recommendations.[53] The union appears to have treated the task force as an actual consultation process rather than negotiations and to have spent its time focused on the official terms of reference.

Throughout the process, the government pursued a hidden agenda that bore little relationship to the terms of reference the union was pursuing. Avoiding job actions by public employees in the upcoming election period was just the first objective of the task force as far as the government was concerned. As the task force proceeded in its work, it became increasingly clear that the government was skillfully stage managing and manipulating the entire process.

Since the task force was intended by its official terms of reference to be a cooperative, collaborative exercise that would produce (at least theoretically)

49. Finkel, "The Boomers Become the Workers," 144.

50. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fond, government note, 3 February 1975, 2.

51. Alberta Task Force, *Report of government*, 28 October 1976, 4–6.

52. Alberta Task Force, *Report of government*, 28 October 1976.

53. Alberta Task Force, *Report of* AUPE, 1 November 1976.

a single final report, it would seem logical that the union and management members would share all relevant information coming to them. However, the Alberta Public Service Commissioner secured a contract with a professor in the Faculty of Management at McGill University to provide confidential written and in-person expertise to the government members of the task force and other government managers. This background research and verbal support was not supplied to the labour members of the task force – in fact, the very knowledge of its existence was kept from them:

> Might I suggest therefore that you provide us with a confidential report consisting of:
> a. a review of Canadian Public Service Labour Relations Legislation particularly at the Federal and Provincial Government levels (with emphasis on the central elements of a collective bargaining system such as impasse resolutions machinery, bargaining unit structure, union and employee rights and prohibitions, etc.).
> b. the implication of this context for the Province of Alberta.
> c. your evaluation of current Alberta legislation.[54]

It is telling that such an analysis was withheld from the union task force members. It is exactly the sort of information that the task force then proceeded to gather as it travelled across Canada and there seems little reason for the secrecy. It does suggest that the government viewed the task force process, as a win-lose rather than a cooperative exercise.

More tellingly, the government developed confidential terms of reference for its members of the task force. Preliminary discussions took place at a meeting on 20 August 1975 with the Provincial Treasurer, the Ministers of Labour and Advanced Education and Manpower, two deputy ministers, the Acting Public Service Commissioner, other management officials, and the government members of the task force present. The accompanying briefing note examined issues that were 'critical' and 'non-critical' for the government, as well as hinting at the government's underlying cynicism about the whole process: "A basic assumption in the initial formation of the task force was that sufficient changes could be made which the CSA would perceive as gains."[55]

A later draft of the Terms of Reference sent to Provincial Treasurer Leitch by Acting Public Service Commissioner Jim Dixon on 20 October 1975 intended for the government members only and is explicit in instructing the task force members just what they may or may not agree to with the union task force members:

> **Terms of Reference for Government Representatives**
> The Task Force on Provincial Public Service Labour Relations
>
> My understanding of the Government's position with respect to the terms of reference of the government appointees to the task force is as follows:

54. PAA, Accession No. GR1990-0480, File 1501-5-1 & 1501-5-3, Alberta Legislation PSERA, Robertson, Goldenberg letters, 25 April and 17 July 1975.

55. PAA, Accession No. GR1990-0480, File 1501-5-3, meeting attendance list and accompanying briefing note, 20 August 1975.

1. The following procedural changes may be made:
   (a) introduction of a conciliation step
   (b) administration of a new act to be conducted by an independent board
   (c) prohibition of unfair labour practices
   (d) recognition of current practices, such as divisional bargaining.
   (e) statutory definition of negotiable items

2. We may accede to the CSA's request for repeal of their Act (subject to suitable safeguards for the transfer of bargaining rights to the new body which is created). A secondary effect of repeal may be the recognition of the CSA as a bargaining agent under the Labour Act for groups other than those under the purview of the Task Force.

3. We may abolish the sole recognition of the CSA (while effectively preserving it in the general service through statutory definition of bargaining units) and allow other unions the right of organization.[56]

The final iteration of the government members' terms of reference was extremely specific, supplying detailed explanations in each section. For example, 1(b) and 1(e) above from 20 October 1975 became:

1. (b) administration of a new act to be conducted by an independent board,
   under present legislation all interpretations, judgments and decisions are made by the Minister. This is perceived by the union to put unfair power in the hands of the employer and is potentially embarrassing to the Minister (e.g. CNA's at UAH etc.[57]). In the two most important areas, i.e. determination of negotiable items and of appropriate bargaining units, we intend to limit the Board's discretion by legislation. The items left are basically procedural: policing the sequence and time limits; conducting certification votes and certifying bargaining agents; naming conciliators; appointing arbitration boards; hearing complaints re. unfair labour practices; and generally acting as referee in the bargaining process and interpreting the legislation for both parties. Once appointed, such a board would be outside Ministerial control (i.e. reports to legislature), the framing of statutory limits and guidelines for the board is therefore of utmost importance.

1. (e) statutory definition of negotiable items
   this will provide direction from the legislature rather than unilateral decision by the Minister. Statute should define non-bargainable items such as pensions and other benefits controlled by separate statutes. It should also confirm the employer's right to manage in such areas as: work methods and procedures; staffing; job classification; training and development; and employee appraisal.[58]

The task force had yet to travel to British Columbia, Saskatchewan, and Manitoba on its fact-finding mission, but the government and its appointed task force members had already reached their bottom line. That final position was determined, not by the task force members working and negotiating with each other, but by fiat dictated by the most senior and powerful politicians in the Lougheed government.

56. PAA, Accession No. GR1990-0480, File 1501-5-3, memo to M Leitch, accompanying notes, 20 October 1975.

57. This refers to an ongoing jurisdictional dispute between the CSA and the Alberta Certified Nursing Aide Association over Certified Nursing Aides (CNAs) in the Crown hospitals.

58. PAA, Accession No. GR1990-0480, File 1501-5-3, note, 28 November 1975.

It is clear that the structure of the task force meant that the government had no reason to negotiate or compromise on its "bottom line" positions, particularly after the provincial election was over. The only counter available to the union to the overwhelming legislative majority of the government would have been a demonstration (or series of demonstrations) of continued militancy by its members. The wildcat strikes were what had got them to the task force process (which in the union's analysis was at least a partial win), yet there was no effort to mobilize continued job actions to strengthen their "bargaining" position.

The lack of union militancy can only have been a relief to a government determined to withhold the right to strike from provincial employees. Despite the government's public insistence that there was no consensus on the right to strike for public employees, privately they acknowledged that most jurisdictions they had studied granted those rights:

> The rhetoric will be given some semblance of credibility by the fact that five of the eight public employers visited have granted the right to strike and the three that have not are in some degree of turmoil.[59]

Even more critically for the government, there was a real possibility that, without new legislation to prohibit it, provincial employees might already have the right to strike in Alberta:

> We are advised that current legal opinion may be moving to the position that right to strike is a common law right unless prohibited. We have been successful to date in obtaining injunctions against C.S.A. initiated strikes on the basis of an agreement in force. Since all of our agreements contain a "remain in force until replaced" clause we have never had to face the fact in Court that The Public Service Act does not specifically prohibit strikes.
>
> Repeal of the C.S.A. of Alberta Act and adoption of the term "Union" may cause C.S.A. members to feel that they have the right to strike; the protection afforded by the continuance clause could be removed by an arbitrator; and furthermore, the C.S.A. may succeed in calling a strike against a provincial employer such as The Alberta Home Mortgage where no agreement yet exists.[60]

However, in the absence of any union challenge, the government confidently moved ahead with their entire labour law package. Recall that the provincial treasurer said that the purpose of the bill was to implement the changes on which the entire task force agreed and substantially all the recommendations made by the government appointed members of the task force. In other words, almost every one of the government appointed members' recommendations were followed or exceeded and *none* of the union appointed members recommendations were followed unless they fortunately agreed with the government position. This is ironic because the government pre-approved or constructed

59. PAA, Accession No. 1979.322, Box 2, File 20, Clarence Mervin Leitch fonds, Memo from J.E. Dixon, Acting Public Service Commissioner to Merv Leitch, 4 March 1976, 2.

60. PAA, Accession No. 1979.322, Box 4, File 42, Leitch fonds, Dixon Memo, 4 March 1976, 2.

all of the government task force members' recommendations, yet in the final Act, still managed to go beyond those recommendations.

What is particularly disingenuous is that the government had the intention, at least eight months before the final task force report, for the task force to issue separate reports. The provincial treasurer also apparently contemplated a strategy of convincing the union representatives to walk away from the task force altogether:

1. Mr. Leitch does not wish to change legislation to prohibit the right to strike this spring.
2. He understands our problem with the CSA Members of the Task Force but fully expects that we will issue completely separate reports. He feels we can endeavor to subtly influence CSA Members to withdraw but does not want precipitous action on our part unless he approves of such action in the future.[61]

The evidence indicates that the task force was always intended to be a diversion, a clever (and successful) way to diffuse and delay worker militancy and job actions, and to provide a patina of consultation with the union when presenting its new labour laws.

Given the government manipulations and deception surrounding the task force, the claims by the provincial treasurer and other government members in the legislature of extensive and ongoing consultations with AUPE about Bill 41 must be viewed as legitimization rhetoric that misrepresents the nature of the process.

For example, while the provincial treasurer talked about the various meetings with AUPE following the task force report and the preliminary drafting of Bill 41, by their own descriptions of the meetings, these were very much a matter of reporting government decisions already made and not any form of consultation or seeking of advice.

What the government so blithely refers to as ongoing consultations appears to have been simple information sessions where the government repeated its unwavering position to a resentful union executive. For instance, referring to a meeting with the premier and select cabinet members with senior members of AUPE, Leitch said "At that meeting the government made very clear its intention to introduce and pass legislation this spring implementing the recommendations of the government members of the task force."[62]

A Test of Government's Willingness to Compromise

If there were real or meaningful consultations between the government and the union during the drafting of Bill 41, provisions of the Act itself should demonstrate some compromise between the labour and government

61. PAA, Accession No. GR1990-0480, File 1501-5-5, Public Service Commissioner J.E. Dixon memo to government task force members, 8 March 1976.

62. Alberta Hansard, 18th Legislature, Third Session, 28 April 1977, 1031.

task force members' positions on critical issues. One contentious issue was determining who would be included and who would be excluded from coverage of the Act. On that subject, the government members of the Task Force on Provincial Public Service Labour Relations recommended:

IX. Exclusions

18. Employees occupying positions which are:
    (a) exercising management functions, or
    (b) engaged in personnel administration, or
    (c) confidential to management, or
    (d) administering programs in labour/management relations, be excluded from collective bargaining.
19. The Board rule on disagreements between the parties concerning exclusions.
20. Members of self-regulating professional groups (as defined by Statute) be allowed to opt out upon application by a majority of the members employed.[63]

Importantly, any disagreements about exclusions were to be ruled upon by a part-time three member board made up of a neutral chair, one member appointed by the Alberta Federation of Labour, and one member appointed by the Minister responsible for the Public Service Act.

By contrast, the labour members of the task force recommended the existing pertinent section of the Alberta Labour Act:

Part 4 Labour Relations

9. (1) In this Part… (h) "employee" does not include
(i) a person who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations, or

(ii) a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practice under the laws Alberta and employed in his professional capacity [64]

Note that only those actually exercising managerial functions are excluded and that the exclusion for being privy to confidential information is restricted to confidential information about labour relations. This is the law that was applied to all other workers in the province, including hospital, municipal, and educational workers at the time Bill 41 was tabled. The labour task force members wanted very narrow exclusions based upon actual job performance. The government wanted broad exclusions based upon exercise of management functions *and/or* access to *any* confidential management information.

A brief look at the appropriate section (21) of the PSERA makes it clear that not a single concession to labour's position on exclusions was included in the new Act. In fact, the Act actually went far beyond the recommendations of the government members of the task force in the area of exclusions from the bargaining unit. It explicitly added exclusion based upon possession of managerial duties rather than actual exercise of those duties. That would allow exclusion

63. Alberta Task Force, *Report of government*, 28 October 1976, 20.

64. *Statutes of the Province of Alberta*, 1973, Chapter 33, "The Alberta Labour Act," 152.

of persons whose job description included such duties but who did not ever exercise those duties. As well, whole sections of government operations were excluded, including support staff employed by Deputy and Assistant Deputy Ministers, the Executive Council, the Ombudsman, the Legislative Assembly, and government ministers.

As one legal analysis noted:

> The persons who are specifically excluded from the application of the Act [PSERA] are extensive. These include a number of listed positions as well as persons 'who in the opinion of the Board should not be included in a bargaining unit or any other unit for collective bargaining by reason of the duties or responsibilities he has to his employer.' Unfortunately, the legislation does not set out the standards upon which the Board's opinion is to be based. This kind of open-ended bureaucratic power which can result in the deprivation of basic rights is unwarranted in a democratic society.[65]

PSERA: An Early Example of Permanent Exceptionalism

The Act permanently removed the right to strike from employees of the provincial government, its boards, and agencies. Any person who caused or attempted to cause a strike was subject to a fine of not more than $10,000. If a collective agreement could not be negotiated, then a compulsory binding arbitration process imposed one. Arbitration Boards were prohibited from dealing with the organization of work, the assignment of duties, systems of job evaluations, and the allocation of individual jobs and positions. Selection of employees, training, promotion, and transfer could not be arbitrated, nor could pensions.

The prohibitions on arbitration ultimately placed final authority over all of these critical work issues with government. The union could attempt to bargain pensions, for example, but if there was no agreement at the bargaining table, all decisions on pensions would remain the sole prerogative of the employer.

The critical decision-making body charged with interpreting and enforcing the Act, the Public Service Employee Relations Board (PSERB), was made up of five members, all chosen by government.[66] This is another place where the Act went well beyond the government members of the task force's recommendations. They had recommended that the PSERB be truly tripartite – with one person nominated by government, one from labour, and an independent chair chosen by them.

This early example of a permanent restriction on workers' freedom strongly supports Leo Panitch and Donald Swartz's characterization of the otherwise

65. "Public Service Rights Stampeded in Alberta," *Current Labour Developments* (October 1977): Part 4 (np).

66. *Statutes of the Province of Alberta*, 1977, Chapter 40, "The Public Service Employee Relations Act."

later attack on workers' rights in Canada.[67] Although they mark the early 1980s as the centre of a broad legislative attack on workers' rights to free collective bargaining, they clearly identify the Trudeau government's wage and price control legislation as an outlier.[68]

In fact, the permanent exceptionalism of the PSERA in Alberta may actually mark the beginning of the move to coercion detailed by Panitch and Schwartz. The essential elements of this Act had already been set out by the Lougheed government in early 1975, prior to the federal government's wage and price control legislation enacted later that same year.

However, Alberta labour legislation has always been a bit difficult to squeeze into an era of postwar consent. The Manning Social Credit government did pass enabling legislation similar to PC 1003 in 1944, with the addition of mandatory secret ballots on all certifications.[69] Just four years later, in March 1948, a reform of the Alberta Labour Act truncated worker and union rights. Unions and union leaders were made liable for the actions of unions members, illegal strikes could lead to the revocation of collective agreements, and organizing was made more difficult.[70]

Labour rights were further restricted in another set of amendments to the Alberta Labour Act by the Manning government in 1960. Information picketing was made illegal, as was secondary picketing. Government gave itself the authority to declare emergencies that would end strikes if it perceived a threat to life or property. Professionals, including nurses, lab technicians, and x-ray technicians were prohibited from joining unions.[71]

In essence, the Social Credit government's virulent anti-communism and their view of unions as agents of communism made any real legislative consent to free collective bargaining largely a myth in post-World War II Alberta.[72] What consent to free collective bargaining there was in Alberta labour laws was provided grudgingly and eroded steadily after 1944.

Conclusion

THE LOUGHEED GOVERNMENT had a blueprint for public sector labour relations in Alberta that remained unchanged throughout the period leading up to the drafting and enacting of Bill 41, the PSERA in 1977. The job actions and

67. Leo Panitch and Donald Swartz, *The Assault on Trade Union Freedoms: From Consent to Coercion Revisited* (Toronto: Garamond, 1988).

68. Panitch and Swartz, *The Assault on Trade Union Freedoms,* 14.

69. James Muir, "Alberta Labour and Working-Class Life, 1940-59," in Finkel, ed., *Working People in Alberta*, 115.

70. Alvin Finkel, "The Cold War," 134–135.

71. Alvin Finkel, "The Cold War," 142–143.

72. Alvin Finkel, "The Cold War," 152.

increasing militancy of provincial public employees in 1974 at the end of the government's first term in office were indicative of deep dissatisfaction with the government's policies and practices. The government response was deceptive and disingenuous. By creating a Task Force on Provincial Public Service Labour Relations just prior to the provincial election in March 1975, the government defused a labour relations crisis during the crucial election period.

The structure of the task force – with equal representation from government and union – guaranteed that there would be an even split on any contentious issue. Without an impartial chair, there could be no majority opinion on the task force, nor was there any place for public input or an impartial voice (which could have occurred in the Royal Commission format requested by the union). The government planned from early in the process for their appointees to the task force to issue a separate report from the union task force members.

The government members of the task force kept research and information from their union counterparts. They also had the complete text of their 'decisions' and 'recommendations' handed to them in advance by their superiors before they began the supposedly collaborative, cooperative work of the task force.

The plan all along was to adopt the government members' pre-written recommendations into law. The presence of union members on the task force reflected a public relations exercise designed to pacify public employees and to create the appearance of consultation and cooperation. Their continued participation was carefully encouraged through 'concessions' that the government did not actually see as concessions. Moreover, there was a contingency plan in place to present the government members' recommendations alone in the case that the union members of the task force withdrew and even contemplation of convincing them to withdraw if it served the government's purpose.

The PSERA did not reflect any concessions by the Lougheed government to their employees or their union, the AUPE. In the areas of exclusion and the makeup of the PSERB, the Act was even more biased in favour of management than the government's task force members' recommendations.

There was no real consultation by the government with AUPE on PSERA. There were no compromises, no concessions, and no negotiations. Instead, throughout the process, there was deception, manipulation, and the pursuit of a hidden agenda. The task force process was used to delay strike action by public employees during the crucial run-up to the 1975 provincial election, to cool labour militancy in the provincial public service, and to pave the way for the introduction of severely restrictive public sector labour laws following the election.

On the union side, the lack of job actions or strikes from October 1974 through April 1977 is puzzling. It was the militancy of the members and an apparently accelerating wave of job actions in 1974 that prompted the government to deal with the union in the first place. In the absence of further demonstrations of unrest, the Lougheed government appeared emboldened to

pursue legislation that restricted public worker rights even beyond the government's original blueprint.

The union's inability to maintain pressure on the government during the investigation process has had long-lasting consequences. The absolute ban on strikes by public employees covered by the PSERA initiated in 1977 continues in force in Alberta today, and that ban has since been expanded to include the provincial health care sector. Public sector workers have defied the legislative ban against strikes on a number of occasions and achieved gains that would have been impossible had they stayed within the law. But the provincial government has responded to "illegal" strikes, meaning any strikes by workers covered by PSERA, with crippling fines. So, Alberta provincial government workers today still suffer the consequences of a duplicitous process hatched by the Lougheed government to deny unionized public service workers the same rights as unionized private sector workers, a process which successfully ensnared the principal provincial government union at a crucial time and made it unnecessary for the government to offer concessions to its own workforce. Therein lies a cautionary note to unions everywhere about the dangers of demobilizing members to cooperate with governments offering inquiries as a substitute for class confrontations: the fewer signs of militancy on the part of workers, the less reason governments have to make concessions to them and their unions.