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Article abstract

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From Advice to “Secret Mandates”: The Evolution of Government Intervention in Public-Sector Bargaining in Alberta, Canada

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Summary

Governments in Canada are increasingly using multiple tools to advance their political agenda at the expense of free collective bargaining in the public sector. Legislative intervention has long been a strategy to curtail bargaining rights (Evans et al., 2023). Recently, governments have turned to non-legislative means to influence bargaining outcomes. This article is about the use of a coordination office, a decidedly non-legislative tactic, and how, over two rounds of negotiations, it transformed public-sector bargaining in Alberta. Bargaining has been further transformed by enactment of a legal requirement to keep the government’s mandates secret, the outcome being increased frustration among union representatives and potential damage to long-term relationships. Together, these measures have provided the government with a powerful means of influence, which, if successful, could spread to other jurisdictions.

Keywords: public-sector collective bargaining; government intervention; permanent exceptionalism

Résumé

Au Canada, les gouvernements ont de plus en plus recours à de multiples outils pour faire avancer leur agenda politique au détriment de la libre négociation collective dans le secteur public. L'intervention législative est depuis longtemps une stratégie visant à restreindre les droits de négociation (Evans et al., 2023). Récemment, les gouvernements se sont tournés vers des moyens non législatifs pour influencer les résultats des négociations. Cet article traite de l'utilisation d'un bureau de coordination, une tactique résolument non législative, et de la manière dont, au cours de deux rondes de négociations, le bureau a transformé les rapports collectifs dans le secteur public en Alberta. La négociation a également été influencée par l'adoption d'une obligation légale de garder secrets les mandats gouvernementaux, ce qui a eu pour effet d'accroître la frustration des

représentants syndicaux et de nuire aux relations à long terme. Ensemble, ces mesures ont fourni au gouvernement un puissant moyen d'influence qui, en cas de réussite, pourrait s'étendre à d'autres juridictions.

1. Introduction

Canadian governments have long intervened in public-sector collective bargaining by legislatively pre-empting or terminating strikes and by imposing contract provisions (Evans et al., 2023). Researchers have paid less attention to non-legislative strategies to shape the outcomes of public-sector bargaining. Governments have a strong interest in such outcomes and have developed a series of strategies to influence them beyond direct legislative interventions. This article is about the evolution of legislative and non-legislative interventions in public-sector bargaining by the government of Alberta from 2014 to 2022. The Alberta case is noteworthy for two reasons. First, during that time, the Alberta government changed its management of public-sector bargaining from what has been described as an informal, ad hoc approach to a highly coordinated one of directing the bargaining goals, behaviour and outcomes of notionally independent agencies, boards and commissions (ABCs) through the use of a dedicated bargaining coordination office. Second, in 2019, it became the first provincial government to impose binding, confidential ministerial directives through legislation on public-sector employers.

Our paper raises two questions. First, what impact did the Alberta government's new approach have on public-sector bargaining? Second, how was the latest round of public-sector bargaining shaped by the imposition of confidential directives and the creation of a bargaining coordination office? Our main contribution here is to explore how the provincial government has intervened in public-sector bargaining to achieve its desired outcomes while also staying within the bounds of relatively new jurisprudence under the Canadian Charter of Rights and Freedoms. This case study will help explain how Alberta's confidential directives have impacted public-sector bargaining, from the perspective of the union's negotiators.

2. Government Intervention in Public-Sector Bargaining

Canadian governments have sought to curtail, contain and limit the impact of public-sector collective bargaining since its inception (Weiler, 1986). Their strategies have included limiting workers' right to strike, legislatively preventing or ending work stoppages and legislatively imposing contract terms (Doorey, 2020). Such intervention has become so common that Panitch and Swartz (2003) coined the term "permanent exceptionalism"—the pattern of governments routinely intervening in public-sector collective bargaining and justifying each intervention as a temporary and exceptional act to protect the public interest. Worker power is thus undermined when the state routinely uses its legislative powers to contain worker mobilization and minimize labour costs, both in the core civil service and in ABCs (e.g., school boards, post-secondary institutions and health authorities) for which the state is the primary funder (Swimmer, 2001). This behaviour can also assist private-sector employers in resisting worker demands, thereby maintaining capitalist modes of production.

Government intervention has, for the most part, achieved the desired results (Smith, 2020). Occasionally, the courts will overturn legislation, but these decisions normally occur years after the government has reaped the benefits of its intervention. Moreover, governments rarely face political consequences and sometimes receive a public-opinion bump for prioritizing the interests of those who may have been inconvenienced by the job action, such as students, parents, patients, consumers and taxpayers (Swimmer & Bartkiw, 2003). In general, successful interventions have

encouraged further interventions to maintain the benefits of permanent exceptionalism (Rose, 2016).

Recent Supreme Court decisions on freedom of association have complicated legislative intervention in public-sector collective bargaining. In *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia* (2007) and *Saskatchewan Federation of Labour v. Saskatchewan* (2015) the Supreme Court struck down legislation that respectively imposed collective agreement terms and limited the right to strike. As we have argued elsewhere (Foster, Barnetson & Cake, 2023), these decisions have not significantly curtailed the frequency of legislative intervention in public-sector bargaining. Rather, governments have altered the types and degrees of intervention to comply with each new ruling without materially impacting their ability to impact negotiation outcomes. As a result, legislative intervention continues to be contested, as shown by court challenges over legislated pay increase maximums in Manitoba (*Manitoba Federation of Labour et al v. The Government of Manitoba*), Nova Scotia (*Nova Scotia Teachers Union v. Nova Scotia (Attorney General)*) and Ontario (*Ontario English Catholic Teachers Assoc. v. His Majesty*).

3. Non-Legislative Intervention

While legislation is an important tool, governments also take part directly or indirectly in the bargaining process through non-legislative means. Such means can take a number of forms. For example, when the government is the employer, (e.g., of the core civil service), organizational decision makers (e.g., the cabinet) act like any other employer and establish (and adjust) mandates for their negotiators. In this way, the government's fiscal priorities directly shape bargaining goals, behaviours and outcomes. The situation is more complicated when the government is the primary funder of an organization but not the direct employer (e.g., education and healthcare). In this situation, the government does not automatically sit at the bargaining table or approve the final settlement (Ross & Savage, 2013).

In the 1990s, governments shaped bargaining at ABCs via legislative mechanisms, such as by narrowing the scope of issues subject to negotiation and by changing the rules of collective bargaining (Reshef, 2007; Swimmer & Bartkiw, 2003). This approach began to change in the early 2000s, with governments articulating desired outcomes and compelling ABCs to achieve them (Thompson & Slinn, 2013, 406). This change was seen most clearly in bargaining with teachers (Reshef, 2007; Rose, 2003; Sweetman & Slinn, 2012), but also occurred in other sectors. Today, Canada has a patchwork of approaches. Some provinces, such as Quebec and Newfoundland, have centralized bargaining with the government (Peters, 2014). Other provinces, particularly in Atlantic Canada, have centralized bargaining for some issues while leaving local matters to local tables. Ontario has a complex mixture of centralized and decentralized structures (Chaykowski & Hickey, 2012). Some jurisdictions have formalized a centralized process for issuing mandates. For instance, since 2013, the Federal Treasury Board has had a veto over tentative agreements with all agencies and Crown corporations (Treasury Board of Canada, 2008; Clark Wilson LLP, 2013). Saskatchewan also has a standing cabinet committee to oversee bargaining matters (Institute for Research on Public Policy, 2006).

The most developed model is found in British Columbia. Since 1993, the Public Sector Employer's Council (PSEC) has coordinated "labour relations, total compensation planning, and human resource management across the broader public sector" (Government of B.C., 2023a). In practice, the PSEC establishes, and makes public, a monetary mandate and contract term for all public-sector employers. Other government priorities, such as service-delivery improvements, are sometimes added to the publicly communicated mandate (Government of B.C., 2023b).

Historically public-sector bargaining in Alberta was decentralized and interventions ad hoc. In recent years, the province has moved toward the B.C. model by creating a bargaining coordination office to enforce legislated mandates. The details of Alberta's shift is discussed below.

4. Effects of Government Intervention on Public-Sector Bargaining

Labour scholars have long observed that both the process and the outcome are shaped by the dual nature of the state's role in public-sector bargaining (as employer and legislator) and by its willingness to use its powers to influence bargaining (e.g., Sack & Lee, 1989; Finkelman, 1986). Specifically, they have noted that “persistent government intervention can gradually transform the process of collective bargaining and with it the union-employer bargaining relationship ... [and] may destabilize the ongoing relationship between the direct employers and labor” (Reshef, 2007, 691).

Government intervention, both legislative and non-legislative, leads to increased conflict between the parties and, over the long term, will undermine the parties' ability to achieve negotiated settlements (Rose, 2003; Swimmer & Bartkiw, 2003; Evans, 2013). As Slinn (2011, 32) observes, “ad hoc solutions have caused lasting damage to the parties' capacity to negotiate, angering and alienating those subjected to this blunt governmental power.” These adverse effects have intensified in recent years, with neo-liberalism and austerity politics increasing tensions at the bargaining table and the degree of government intervention (Camfield, 2007; Cantin, 2012; Ross, & Savage, 2013).

5. The Case of Alberta

Alberta's approach has evolved rapidly and dramatically, moving from an ad hoc strategy to a structured, professionalized and pervasive engagement in all aspects of bargaining. It is thus a case worth studying. Alberta is also the first province to operationalize legislated, mandatory and confidential bargaining directives for all public-sector employers. Other provinces have passed legislation to codify monetary bargaining mandates (e.g., Manitoba, Ontario and Nova Scotia), but these mandates are spelled out in the legislation, rather than hidden from view.

This evolution has coincided with significant upheaval in Alberta's political landscape. In 2015, 43 years of uninterrupted rule by the Progressive Conservative (PC) party came to an end with the victory of the New Democratic Party (NDP). The NDP was subsequently defeated in 2019 by the United Conservative Party (UCP), a merger of the PCs and a rival conservative party (Wildrose).

A participant in our study said that before 2014 the government took an approach to bargaining that was ad hoc, piecemeal and highly politicized. Beginning in 2014, successive Alberta governments have altered both legislative and non-legislative strategies to influence public-sector labour relations. This change began with the establishment of the Public Bargaining Coordination Office (PBCO, today called the Provincial Bargaining and Compensation Office) in the Ministry of Finance. Modeled after B.C.'s PSEC, it had the aim of building a more coordinated bargaining approach. The 2017 round of bargaining was the first under the PBCO model and resulted in settlements that mostly entailed two years of wage freeze to be sometimes followed by a wage re-opener in the third year.

In late 2019, the new UCP government passed the *Public Sector Employers Act* (PSEA), which authorized the finance minister to “issue directives that an employer must follow before, during and after engaging in collective bargaining or a related process” (s.3.(1)). A directive could include fiscal limits and the term of any agreement and could be “general or particular in its application” (s.3(3)). Further, the Act asserts that any “directive issued by the Minister under this Act is confidential and may not be disclosed by the employer to any third party without prior consent of the Minister” (s.4(1)). The confidential directives quickly became known as “secret mandates” by labour-relations practitioners in Alberta, a term that our research participants used and which we will use in this paper.

The first bargaining round under the *Public Sector Employers Act* (and the second under PBCO coordination) was tense and conflict-ridden. Most public-sector bargaining was to begin in early 2020 (some agreements in education and municipalities had expired in 2021),¹ but due to the COVID-19 pandemic most bargaining was delayed for 6 to 12 months. When negotiations got underway, the employers asked for major concessions, including substantial wage rollbacks ranging from 3 to 11 percent, some of which would be retroactive, to be followed by multiple years of no cost-of-living increases. These demands incensed the public-sector unions, many of which had members working on the frontlines of the pandemic (Mertz, 2021).

Tensions were exacerbated by the tone of government communications. The government argued that public-sector workers were the highest paid in the country and that rollbacks were needed to bring them back into line (Bellefontaine, 2020). The UCP government also introduced legislation to curtail the power of unions and to limit the ability of workers to join them, thus adding to a perception that the UCP was anti-union and that its ideology was being reflected in its bargaining approach (Foster, Cake & Barnetson, 2023).

Between the autumn of 2021 and the spring of 2022, negotiations were completed at all of the major tables (core civil service, healthcare and education) and entailed three- or four-year deals with back-end loaded wage increases of 3.25% to 4.25%. Employers had dropped most of their other demands for union concessions. All the agreements were concluded through mediation after bargaining had deadlocked, there being no work stoppages at the major tables (two post-secondary institutions settled after short strikes). At the time of writing, dozens of smaller units for post-secondary education, for local school boards and for municipalities have not reached a settlement.

6. Methods

Our case study relied on a combination of literature review, interviews with key participants and our direct personal experiences. We conducted a review of the literature on the 2017 and 2020 bargaining rounds, including legislation, media reports and union and government communications, for the purpose of providing the case study with factual background. We conducted semi-structured interviews (Ethics Certificate 24963) in the winter of 2022/23 with nine senior union officials who had engaged in negotiations during the 2020 round.

The union officials were selected because they held senior leadership positions and had conducted or supervised bargaining in the 2020 round. While two had been in their positions for less than three years, seven had between ten and thirty years of public-sector bargaining experience in Alberta. They represented workers in the civil service, healthcare, education, post-secondary and municipal sectors and collectively represented the majority of public-sector workers in the province. The interviews were done by Zoom or in person, lasted between one and two hours and were audio-recorded. The union officials were asked about their roles and experiences and their union’s bargaining structures, as well as their experience with the 2020 round and whether it differed from previous rounds. They were also asked about the government’s involvement at their

table(s) and/or behind the scenes and how it affected the process and outcome. The interview transcripts were thematically coded in line with the previous literature (e.g., Reshef, 2007; Rose, 2016; Sweetman & Slinn, 2012) and with our own experiences. There was significant agreement among the participants in their experiences with the 2020 round, and any meaningful differences are noted below.

We also interviewed a civil servant who had direct knowledge of government involvement in public-sector negotiations over multiple rounds of bargaining, including the ones in 2017 and 2020. This interview took approximately an hour. The civil servant was asked to outline the government's historical involvement in bargaining and its involvement in the 2020 round, as well as to confirm or refute factual claims made by the union officials. This interview was recorded and transcribed and included with the other interviews for thematic analysis. We decided not to interview the employer's representatives because, even after completion of bargaining, the PSEA bars them from discussing aspects of bargaining that concern the "secret mandates." We deemed it unethical to ask them to break the law or to publish an analysis that may suggest they have broken the law. Further, we felt the legal prohibition might lead to incomplete and/or unintentionally misleading data. We acknowledge the lack of employer perspective as a limitation of this study.

We ensured anonymity by not identifying the union official's name, union or sector. Furthermore, quotations are not attributed here to anonymized names (e.g., Union Official 1) to prevent identifying the interviewee through triangulation of multiple quotations. When we need to refer to events in a specific sector, we do so without the use of direct quotations. Similarly, we do not reveal the civil servant's specific role(s) to prevent identification. All the quotations reported below are from union officials unless attributed to the former civil servant.

The interviews were supplemented with some of our first-hand experiences. . One author served as the bargaining chair for their faculty association during the 2020 round. The same author also served temporarily in a senior government role which provided detailed knowledge of government involvement during the 2017 round.] Our insights were used not as primary evidence but rather for thematic analysis of the interviews.

7. Evolution of the Alberta Government's Involvement in Bargaining

The union officials agreed that the Government of Alberta (GOA) has long had a keen interest in the results of negotiations at the so-called "big six tables," where agreements are negotiated for healthcare workers (four tables), teachers and the core civil service.² The GOA normally took part at those tables in some fashion and had a high degree of authority over wage settlements, even when not at the table. "We used to call them the ghost at the table because they were never actually there, but they were the ones making the decisions."

Before the 2010s, government involvement in public-sector bargaining was not coordinated. According to the civil servant, "Through most of the PC years, it was more of an ad hoc sort of approach until about the last two years before the end of their government." The relevant provincial ministry (e.g., the Ministry of Health in the case of healthcare) would engage with the employers, but there was little communication or planning between ministries. "Basically, the minister or the deputy minister involved would swoop in at the end [of bargaining], to not only direct the deals but potentially even cut the deals. Often, they would swoop in with, we called it, the wheelbarrow of cash."

The union officials concurred. “Almost every round, at one point, [the employer] says, you know, we’ve reached the end. There is no more money. So, we would use back channels [to get the deal done].” The approach to settle agreements varied from government to government. “Every Premier has been a little bit different. Every government has been a little bit different to deal with.” Both the union and the government official said that the government relied on the persuasive power of pattern bargaining to keep the approximately 250 smaller tables (e.g., post-secondary, municipalities) aligned with the larger tables, rather than taking part directly or indirectly in the negotiations.

In 2012, under PC Premier Alison Redford, the government created a secretariat to begin the process of coordinating public-sector bargaining. This short-lived secretariat had little impact and was eliminated when Redford resigned in 2014. Jim Prentice, Redford’s successor, took a different approach, creating what he called the Public Sector Working Group. According to the civil servant, “They brought in representatives from multiple departments who had experience with public-sector bargaining. I think there was Treasury Board involvement. There was [Ministry of] Labour involvement ... and obviously the big funding departments. For about a year, they met, and ... they seconded people from departments, to basically come up with recommendations for a system, a process for the coordination of public-sector bargaining.” This group had no direct involvement in the 2014 round of bargaining.

When Rachel Notley’s NDP took power in 2015, the working group had finalized a plan for coordinating bargaining and Notley decided to implement it. The unit was renamed the Public Bargaining Coordination Office (PBCO) and placed under the Ministry of Treasury Board and Finance. During 2015 and 2016, the unit hired staff and developed the bargaining-coordination system. In 2022, it was renamed the Public Bargaining and Compensation Office.

The 2017 round was the first one with direct PBCO involvement in bargaining. An official from the PBCO was physically present and actively engaged at the big six tables. According to the civil servant, the PBCO assigned someone to the employers’ bargaining committees to ask questions about their mandate, thus creating a way for the employer’s team to reach an agreement by altering its mandate. The civil servant confirmed that the PBCO was not at the smaller tables but did consult with those employers to provide mandate direction. Both the union officials and the government official broadly agreed that the 2017 mandate had the sole aim of getting two years of zero wage increases with a wage re-opener in year three. Further, employers were authorized to achieve their financial mandate by improving the non-monetary language, for instance through lay-off and contracting-out protection.

In 2019, the new UCP government under Jason Kenney introduced the PSEA, which applied to all of the provincial public-sector employers, except municipalities and private post-secondary institutions. The civil servant said that the PSEA was a response to a PBCO review of the 2017 round, which revealed that employers at the smaller tables—school boards in particular—had not complied with the government’s bargaining direction. “The [PBCO] recommendations were basically saying we need to put a little bit more teeth [into the mandates].”

The 2020 bargaining mandate(s) issued under the PSEA were unknown to us because disclosure, even after the fact, remains illegal. It is nonetheless possible to infer the wage aspect of the mandates from the 2020 opening offers, which consistently asked for wage rollbacks in the first year, ranging between 3 and 11 percent, to be followed by three years of zero increases. This position was consistent with one of the recommendations of the UCP government’s financial review panel (MacKinnon, 2019) to reduce public-sector compensation across the board. Ultimately, all the major agreements provided for modest wage increases of 3.25% to 4.25% over either three or four years, with most of the money back-end loaded. Whether the mandates extended beyond the wage package was a point of debate among the participants and will be discussed further below.

8. 2020 Bargaining Round

8.1 Nature of Government Involvement

The government took part in the 2020 round to a degree and in a manner that depended on the sector and the number of workers. At each of the six big tables, the PBCO had a representative throughout bargaining, just as in 2017. All the union officials reported that, at least before mediation, the PBCO representative remained silent during the bargaining sessions with the union. Silence did not, however, mean that the representative was not exerting authority. According to the union officials, the PBCO was actively managing developments at the table. “It was very clear that the people at the table did not have the authority to negotiate certain things.” The PBCO at times was actively shaping employer proposals. “The government would say to [the employer], okay, this is your proposal today, and their negotiator would have like an hour sometimes to read and digest it and then have to give it to us. Sometimes it was clear that [they] had just got this and [they] didn’t even understand what was in it.” All the union officials agreed that no deal could be settled without approval from the PBCO.

At the smaller tables, the PBCO representatives were not physically present during negotiations. Officials noted, however, that during bargaining the employer teams were clearly in regular contact with the PBCO to obtain direction. Multiple officials reported employer representatives needing to “check out” a proposal with someone not at the table before countering. Although the officials could not say for certain that this person was a PBCO representative, the civil servant confirmed that the PBCO assigned staff to every bargaining table and that the staff remained in regular contact with the employer to ensure they were complying with the government’s mandate.

The municipal sector negotiations played out differently. The union officials agreed that the PBCO took no direct or active part at the tables with municipal employers. The civil servant confirmed that it had “zero” role at those tables but that some efforts were made to include the largest cities in coordination. “We had, three or four times a year, a committee where we would bring in representatives from each of the six sectors of the public sector to just to talk about issues and updates. We would invite a representative of Edmonton and Calgary to come to some of those meetings ... We are just talking about coordination and recognizing the municipalities are a player and they have a role.” The union officials from the municipal sector did, however, believe the government’s mandates played an indirect role in bargaining. Some pointed to the reliance of the cities on the province for much of their funding, arguing that informal pressure kept them in line with provincial priorities.

8.2 Scope of the Government’s Mandate

The union officials were uncertain about the scope and content of the mandates their respective employers had or how the mandates may have shifted during bargaining. The civil servant declined to reveal this information. During bargaining, the union officials attempted to intuit the mandates of the other side by evaluating the signals, information and dynamics they observed at the bargaining table. As noted above, they agreed that the similarity of initial opening offers suggested that the initial monetary mandate was a wage rollback to be followed by several years of zero increases. There was less agreement on how detailed the mandates were or whether they included direction on non-wage items.

Some union officials believed that the 2020 mandate was consistent with past practice, which focused on the total monetary value and let the employer handle matters with little or no financial impact. One of them suggested that the mandate was monetary, while adding with a nudge, “I think what happened this round was that the government gave them specific instructions on overall

compensation and [also] said, in terms of management rights and operational stuff, you propose whatever you want and we promise we will back you.”

Other union officials believed that the mandate went beyond setting a monetary value and delved into a wide range of issues. For this view, they cited two lines of evidence. First, they had witnessed the employer’s negotiators unexpectedly rejecting minor amendments that were cost-neutral and had no material impact on the employer but that would advance a union objective, such as improved workplace equity. Often, the employer stated that the amendment “looked too different” from the content of other agreements. Those union officials inferred that someone behind the scenes wished to standardize the content of the agreements and the power to do so. Second, they reported the employer’s representatives tabling proposals in which neither party had previously expressed interest. They talked about proposals “coming out of the blue.” Some of them observed that the proposal content sometimes seemed more in line with the policy positions of provincial political figures than with the employer’s interests.

One union official believed that these expanded mandates were about standardizing the language of different agreements across a sector. “It’s not just about getting a financial mandate, but it’s also about pushing things down. So when [some] people have benefits or language that’s better than other people in the sector, it’s very clear that there’s an attempt through the government to push those individual language clauses down and to try to make an even pattern.”

After interviewing all the participants and reflecting on our own experiences, we tentatively conclude that the big six tables, where the PBCO was present, had less need for a formal “mandate” about non-monetary items because the PBCO representatives, who were in regular contact with political decision makers, could intervene directly to affect the outcome. In contrast, if a table had no PBCO representatives, there were often multiple bargaining relationships that affected similar kinds of workers. The mandates were thus expanded to address the government’s concerns about all employers within the sector.

8.3 Impact of Secrecy

The employers were required to keep the government’s mandates secret unless the Minister had given permission to share them. While negotiators rarely disclosed the full extent of their mandate, the PSEA made it harder for the employer’s negotiators to reveal elements of their mandate, the aim being to help negotiations move forward or to achieve a strategic goal. For the union’s negotiators, “secret mandates” also made it difficult to ascertain which proposals were coming from the employer—and therefore more malleable—and which were coming from the government. The union officials indicated that they were compelled to “guess the mandate” during negotiations, because knowing the source of a proposal was necessary to shape the union’s response. They asserted that this dynamic both slowed bargaining and put them at a disadvantage.

When the union’s negotiators directly asked for the mandate of the employer’s negotiators, the latter would refuse to disclose it, with some denying they were acting under a mandate altogether. As bargaining proceeded, the employer’s negotiators would find ways to indicate that they had to seek government approval. “They made it very clear that they have principals that they had to, you know, check in with and that they get their marching orders from.” The employer’s negotiators would also find ways to signal when a proposal came from the government. For example, when the employer’s negotiators tabled a proposal that they knew the union would dislike, they would find a way to distance themselves from the proposal. “They did say several times ‘as directed by the government’. ... Particularly when they [tabled a specific concessionary proposal] they wanted us to know, please don’t shoot the messenger, this is directed by the government.”

The union officials believed that, by the end of the bargaining, the monetary mandate was clear. They remained uncertain about what other aspects of the deal were bound by government directives. Some believed that the PBCO had vetted almost every aspect of their agreements, while others thought that only key issues were subject to oversight. It is possible that different tables had different levels of PBCO oversight. Most of the union officials agreed that not having knowledge of where directives were coming from undermined their ability to develop a strong bargaining strategy.

8.4 Mediation

Every major agreement, and most of the smaller ones, would reach an impasse during bargaining, with a settlement being worked out during mediation. Mediators played an unusual but essential role in the 2020 round. All of the union officials reported that almost no movement had taken place at the table before mediation. “When we entered informal mediation... we'd agreed on two articles.” Only during mediation did the employer's positions start to shift. One union official conjectured that the looming entry of a third party led employers to reconsider their positions. “[T]hey went from complete insanity to where we normally are at the beginning of bargaining... where they had one or two rollbacks. They withdrew all of the crazy stuff. ... Because I think they didn't want to hear what [the mediator] would say, which is ‘you are crazy?’” After the first few big tables had settled, negotiators at the other tables would develop an approximate sense of the shift in the monetary mandate, and, at some tables, the employer would present revised wage offers in line with that kind of settlement. At all the tables, however, some of the other concessionary proposals were withdrawn before mediation.

Mandate disclosure was more explicit during mediation. At many tables, the mediator would disclose, directly or indirectly, that certain items were subject to the mandate and that therefore little room was left for negotiation. At tables with PBCO representation, it was the PBCO representative who would disclose the mandate. “In mediation, [the PBCO representative] was actually way more candid about it. ... [They] made it very clear what was there under [the direction of] the Minister of Finance.”

Mediation also revealed the extent of government engagement in the process. Mediators found different ways to disclose the government's control over monetary items.

When we got into mediation, [the mediator] said to me ‘why don't we do this at two different tables? So why don't we have one table where we talk about the operational stuff and a second table where we talk about money and I won't even bother inviting [the employer] to that table.... It'll just be you and me and [the PBCO representative], you and your bargaining team.’
[The mediator] said, ‘well, [the employer has] no say in the matter at all, they have no input.’

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

8.5 Shifting Mandate

For the above reasons, all of the union officials believed that the monetary mandate shifted late in bargaining while the other mandates changed only during mediation. This shift created a possibility for settlement. Several union officials believed that the severity of the opening offers had been linked to the UCP's political goal of significantly reducing public-sector salaries and the UCP's ideological opposition to unions and, as a participant suggested, to public-sector workers as well. "I think there's a real sense that they really hated not just the unions but workers. Everything was about job creators. ... I think that was totally what it was about." The union officials believed that the government had clear goals to reduce compensation and other terms of employment and, early on, intended to achieve those goals regardless of how the unions responded.

Most participants believed that the mandate shifted because of changing political and economic conditions. The onset of the COVID-19 pandemic both delayed bargaining and changed the public's perception of public servants, particularly in healthcare and education. Provincial revenue also started increasing as oil prices climbed in the later stages of the pandemic. According to the union officials, that revenue increase made the government's initial hardline position unsustainable.

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

Some of the union officials asserted that the mandate shift was a cabinet decision. One of them talked about a special cabinet meeting being held to decide whether to agree to a mediator's recommendation. Another discussed a post-bargaining meeting with a key government minister who acknowledged that the government had become worried about job action and needed to settle. These observations were supported by the civil servant: "Mandates did shift ... [the civil service's job is] basically getting the political representative to the point where they realize that it probably is the best decision. ... The shift was bigger in 2020 because the starting point was so much starker, but it was a similar process."

8.6 Comparing the 2017 and 2020 Rounds

How did the 2020 round compare to previous ones, particularly, the 2017 round, which likewise had PBCO oversight but no legislated "secret mandates"? Was the government more involved in 2020, and/or was its involvement materially different? The answer appears to differ from one table to another. For the big six tables, officials reported that they saw little difference in the degree of involvement between 2017 and 2020. "These tables, these big employers, have always been driven by government no matter what anybody says." The civil servant confirmed that the PBCO's approach to the big tables was similar to its approach of prior years. The union officials at the big tables, however, did observe a different tone, noting that the tables were much more adversarial and tense in 2020. Officials attributed this difference to the gulf between the negotiating parties (created by the mandates) and the UCP's anti-union animus. "Look, every round is different. A lot of it comes down to what the [goal] of the government of the day is, how nasty that agenda is, versus not. ... This particular government was inherently nasty because they don't like unions."

The union officials from the smaller tables reported much bigger differences between the two rounds, with the government much more actively engaged in bargaining in 2020. "At [the small employer tables], last time we were done in two days, everything settled. [This time] they had like

nothing signed off even [after months of bargaining]. Even though there are fewer things on the table than before, it's actually harder now." Officials from the post-secondary sector were particularly pointed in expressing their surprise at how active the government was at their tables. Even the municipal negotiators, while not reporting increased provincial government involvement, had observed an increased rigidity and hostility from the employer's negotiators, although they could not necessarily ascribe that shift to the provincial government.

8.7 Overall Assessment

Most of the union officials found that the 2020 round had been one of the most difficult and puzzling rounds in which they had ever participated. They attributed this difficulty to the size of the rollback mandated and the extended period when the employer's negotiators refused to budge from their opening positions. "It was the stupidest [round] that I've been in in [my career]. It really was. ... It was crazy. They came into bargaining with more than 250 rollbacks, they went through every article in the collective agreement, and they tried to roll back every single article and they wouldn't move ... for a year. Just insane." Some union officials observed that the extreme position taken by the employer's negotiators had damaged normally professional and cordial relationships between long-time employer and union negotiators, which the officials again attributed to the mandates.

The bargaining process seemed to be a mockery to those union officials at the smaller tables who were experiencing government intervention for the first time. "We were trying to defend ourselves and negotiate with the tools that we have when, really, it's a facade of collective bargaining. At the end of it, that is what it was. ... Here's your porridge. You get what you get, your gruel." The union officials at the big six tables were more accustomed to active government involvement, and thus more accepting of the distorting effects of government intervention, having factored that reality into their bargaining strategies during previous rounds. Overall, the union officials found the degree of antagonism and brinkmanship to be unprecedented, at least before mediation. It is difficult to determine how much of that conflict can be attributed to greater government involvement, how much to austerity-driven bargaining mandates and how much to the use of "secret mandates."

9. Discussion

Alberta's 2020 bargaining round was the first one in Canada to take place under a legislated confidential directive, or what the participants described as "secret mandates." While employers commonly withhold their mandate from the union for strategic reasons (Godard, 2017). With the implementation of "secret mandates," employers no longer have any discretion regarding disclosure. This secrecy is very different from how other governments use directives. Manitoba, Nova Scotia and Ontario have stipulated wage ceilings in their legislation. B.C.'s PSEC posts monetary mandates on a public webpage. Alberta is the first province to make such directives explicitly private.

What is the effect of such secrecy? Our findings suggest that progress is stymied when the employer's negotiators are no longer free to decide how they will manage their negotiations. The union officials universally reported that no substantial progress was made before mediation. Much of the stalemate was likely due to the UCP government's intransigence until the late stages of bargaining, but the effects of that intransigence were worsened by the confidentiality of the mandates combined with active PBCO involvement. Indeed, once the secrecy had fallen away during mediation, the parties were able to reach an agreement. They made a deal by removing the

“cone of silence” around the government’s demands. That secrecy and the government’s rigidity proved to be a significant barrier to fruitful negotiations, according to the participants.

The implementation of “secret mandates” also appears to have damaged the relationships between the parties. The union officials all reported being more frustrated and angrier with this round of bargaining than with any other in their experience. Their emotional reaction is not relevant, but the reasons for it are. The lack of forthrightness and movement from the employer’s side undermined the trust that had been built up between the two sides over the years. The union’s negotiators could tell they were not being treated as they had been in the past. Negotiation research has long shown that trust is key to successful bargaining relationships (Sanderson & Cole, 2017; Carrell & Heavrin, 2013). The “secret mandates” made the employer’s side less able to engage with the other side authentically and reasonably, the outcome being a breakdown in trust and a weakening of the relationship. It is significant that all of the major agreements were settled only after mediation. Although mediated settlements are often seen in the short term as an effective tactic to avoid work stoppages (Godard, 2017), they may indicate that the parties lack a strong enough relationship to reach an agreement on their own (Teplitsky, 2015). Alternately, they may indicate that the bargaining process is no longer adequate to allow the parties to reach a settlement. This is a potential avenue for future research.

It is also significant that the 2020 round saw much greater use of the PBCO by the government to coordinate and control the bargaining process and to enforce its mandates. Alberta is not the first jurisdiction to use a professionalized civil service office to intervene in bargaining, but the rapid shift from ad hoc interventions to systematic, professional involvement makes it an interesting case to document. The PBCO’s role cannot be overstated, as it influenced the process and outcomes at virtually every public-sector bargaining table in 2020 (except for municipalities). As the evolving Charter jurisprudence has narrowed the possibilities for legislative intervention (e.g., legislating contract provisions and restricting labour rights), the use of a professionalized, formal coordination office has become an effective alternative. It gives politicians a direct and effective way to achieve their political goals without (at least so far) running afoul of the Charter.

While no strategy is perfect—the government could not control the impacts of the COVID-19 pandemic on bargaining, for example—bargaining coordination offices may be one of the best options available to governments in the post-*Health Services*, post-*SFL* world. If this is the case, public-sector unions should take note. The inclusion of a coordinating office, either directly at the table or behind the scenes, and the enactment of “secret mandates” undermine the bargaining relationship between the employer-of-record and the union and insert a more daunting actor to which the unions need to respond. Specifically, they will likely need to adopt a more collaborative and coordinated bargaining approach across the public sector to counter the impact of provincial coordinating offices.

10. Conclusion

The Alberta government’s use of “secret mandates” is a new development in its ongoing efforts to intervene in public-sector bargaining. The “secret mandates” have stymied bargaining and weakened the bargaining relationship between employers-of-record and unions. The mandates have been made more effective by the growing involvement of the province’s PBCO, which has both formalized and professionalized the government’s influence at the tables. The use of a formal coordinating office is an effective means to ensure that the government’s priorities are implemented across public-sector bargaining without needing to resort to specific legislation. As a result, we may see creation of such offices by other jurisdictions in the coming years.

Our study provides useful insights into how the 2020 round of bargaining took shape and examines what it might mean for future rounds, both in Alberta and elsewhere. A key limitation is the absence of the employer's perspective on what happened in 2020. This perspective is valuable, and future researchers may be able to incorporate it in an ethical and appropriate manner.

Notes

[1] Over time the major public-sector collective agreements in Alberta have come to possess similar expiry dates, thereby creating coherent “rounds” of bargaining across the public sector. This pattern is preferred by the government and by many unions.

[2] Teachers currently have a dual-bargaining structure. At the central table, the government is an official party, and the parties negotiate wages and matters that have a provincial impact. Once the central agreement is settled, negotiations begin with individual school boards to address issues specific to teachers working for those boards.

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