

## Budget bill contains surprise reforms aimed at weakening public service unions



*Robyn Benson, president of the Public Service Alliance of Canada, called the budget implementation bill “a far-reaching attack on public service workers.” Photograph by: Chris Mikula, The Ottawa Citizen*

By **KATHRYN MAY, OTTAWA CITIZEN** October 22, 2013

OTTAWA — The Conservative government’s budget bill introduces sweeping reforms that could severely weaken federal public service unions as they gear up for an upcoming round of contract negotiations over sick leave and disability.

The scope and breadth of changes the government is proposing to the Public Service Labour Relations Act came as a complete surprise to union officials, who were poring over the implications of the reforms tabled in the second budget implementation bill tabled Tuesday. They claim it will completely change the ground rules for collective bargaining in the public service.

Ron Cochrane, a longtime negotiator and the current co-chair of the union-management National Joint Council, said he has never seen such profound changes. He also said Treasury Board president Tony Clement has never indicated to unions that he felt such changes were necessary to manage labour relations.

“This bill removes any semblance of fairness in collective bargaining. He (Clement) has taken every caution to make sure that no matter what happens, he will win. He has stacked the deck in his favour and that is unheard of in labour relations anywhere.

“And it will be pretty hard to fight an employer that stacks the deck against you ... This has become a game of cards where (unions) don’t get any cards. The employer holds the deck.”

In a statement emailed Tuesday evening, Clement’s office said the amendments to the Labour Relations Act will streamline practices, save money and “ensure the public service is affordable modern and high-performing.”

“Our Government will sit at a bargaining table on behalf of the taxpayer where the rules are fair and balanced,” said the email.

The most worrisome reform revolves around the right to arbitration as a way to settle contract disputes. The government intends to only allow arbitration if both parties — Treasury Board and the unions — agree. If they don’t agree, conciliation and a possible strike are the only other alternatives for unions to settle labour disputes.

At the same time, however, the government has reserved the “exclusive” right to decide which jobs will be designated “essential,” which means employees in those jobs can’t strike. Employees in bargaining groups where the government has designated 80 per cent to be essential will be allowed to seek arbitration to settle impasses.

The government defended its unfettered right to decide what work should be essential because they are “accountable” to Canadians, not the unions.

“A democratically elected government should have the right to identify what Canadians consider ‘essential services,’” said Clement’s office in an email.

Under existing rules, the union and government negotiate the number of employees who are considered essential. If they can’t agree, the matter is turned over to the Public Service Labour Relations Board to decide which jobs will be considered essential in the event of a strike.

Cochrane said the changes seem to also allow the government to designate more employees essential during a strike if it finds the strike is having an impact on government operations.

Unions say it appears the government is forcing the most militant unions — such as those representing the customs officers and prison guards — to go to arbitration while forcing the non-militant unions to go on strike to settle a contract dispute.

“We’re just shocked,” said Gary Corbett, president of the Professional Institute of the Public Service of Canada. “It appears to be so anti-union, and the biggest question we have is why do they want to have more strikes? Isn’t arbitration all about finding solutions without disruption?”

In fact, the implementation bill’s tabling came as the Treasury Board reached a tentative deal Tuesday with the union representing 8,700 border guards and others workers at the Canada Border Services Agency, ending a tense and drawn-out dispute that many predicted was headed for a strike.

The two were at an impasse over the Customs and Immigration Union's demand that they were entitled to similar pay and working conditions as prison guards who did similar work. The compromise settlement gave customs officers the same 5.2 per cent wage increase that all public servants got in addition to the much-disputed \$1,750 annual payment that prison guards receive.

That settlement marks the last of the 27 contracts to be settled with 17 unions in the current round of bargaining that began in 2011, leaving the government a clean slate as it gears up for the next round in 2014 to replace sick leave with a new short-term disability plan.

What seems to have baffled unions about the reforms is why the government wants to limit binding arbitration as a way to resolve impasses. Most governments offer arbitration so contract disputes can be settled without disrupting the delivery of programs and services to Canadians. Many public servants aren't comfortable with withdrawing their services.

Under the existing rules, unions have two options to resolve contract disputes, and they must select one before they start contract negotiations. They can pick conciliation and the possibility of a strike, or they can opt for binding arbitration. Most federal unions pick arbitration.

The government is also amending the factors that conciliators and arbitrators can consider when making an award or report. It wants the primary considerations for any settlement to consider the economy or the country's fiscal situation and whether the government faces a problem recruiting or attracting employees at the existing salaries.

The legislation also makes clear that government's compensation policy must be in line with the private sector. At the same time, it eliminates the pay analysis and research mandate of the Public Service Labour Relations Board to monitor wages in the public and private sector.

The PSLRB is in the midst of one of its largest compensation studies, comparing the total compensation of public servants in 79 benchmark jobs with those who are working in similar jobs in the private sector and broader public sector. Its first results are expected next summer.

Treasury Board recently sought bids from consultants to conduct its own comparative compensation studies, which will be done over the next four years.

Lisa Blais, president of the Association of Justice Counsel, said the reforms will gut the legislation and undermine free collective bargaining, and she suspects will lead to a constitutional challenge.

"We know the core of this is to ensure zero per cent opposition to this government, and public service unions or umbrella organizations that unions belong to have been leading the charge ... So this is about shutting down opposition and weakening unions and their voice."

The government is also taking steps to streamline the recourse process for grievances and staffing complaints. Discrimination cases now handled by the Canadian Human Rights Commission will be handled by the Public Service Labour Relations Board.

It also calls for the merger of the Public Service Staffing Tribunal and the creation of a Public Service Labour Relations Board to form a new Public Service Labour Relations and Employment Board.

“This bill represents a far-reaching attack on public service workers and the unions that represent them,” said Robyn Benson, president of the largest union, the Public Service Alliance of Canada.

“The government is upsetting the balance of labour relations, and is showing a callous disregard for due process, health and safety, and the collective bargaining rights of every single public service employee. The collective bargaining rights and the protections of workers who face discrimination, who do dangerous work, or who are treated unfairly will be undermined by the proposals in this bill.”



## Budget bill broadens federal power to curb public-sector strikes

### Bill would allow Ottawa to unilaterally designate civil servants as essential services

By STEVEN CHASE, The Globe and Mail, October 23, 2013

Stephen Harper has stuffed measures into the Conservative government's new budget bill that would change the balance of power in relations between Ottawa and public sector unions – including giving federal employers the power to unilaterally designate parts of the bureaucracy as an essential service that cannot strike.

The Public Service Alliance called the move an attack on the rights of hundreds of thousands of civil servants, and labour lawyers said it is a fundamental change in Ottawa's relations with its work force.

"This is virtually eviscerating collective bargaining for public servants," said Steven Barrett, a labour lawyer with Sack Goldblatt Mitchell LLP in Toronto.

Treasury Board President Tony Clement told The Globe and Mail the measure is part of "transforming and modernizing the public service negotiation architecture" in Ottawa as the government works to balance the budget by 2015.

The changes are packed inside an omnibus budget bill that contains unrelated measures including sweeping new powers that would enable the federal cabinet to place anyone from the governor of the Bank of Canada to opposition MPs under a stricter conflict-of-interest regime.

Mr. Barrett questioned why the government buried the public sector labour relations measures in a budget implementation bill instead of tabling them as separate legislation "that could be properly debated rather than smuggled in through the back door."

The legislation would grant Ottawa "the exclusive right" to determine whether any "service, facility or activity of the government of Canada is essential because it is, or will be necessary for the safety or security of the public or a segment of the public."

Currently, according to Aaron Scheewe, acting director of communications for Mr. Clement's office, unions can effectively veto Ottawa's efforts to designate some government jobs as essential services.

"That's why we're moving to make it fair."

The measures would make it harder for unions to seek binding arbitration for labour negotiations. "Currently, the unions alone have the choice to send disputes to arbitration," Mr. Scheewe said.

Under the proposed legislative changes, talks with bargaining units in which less than 80 per cent of staff are deemed essential would go to an arbitrator only if both sides agree.

Critics said these changes would reduce the leverage of bargaining units. If, for instance, 79 per cent of a bargaining unit is designated as essential – and cannot strike – only 21 per cent of the work force could use job action as a lever.

"You can imagine the effectiveness of strike action if nearly 80 per cent of the work force is designated essential," Mr. Barrett said. "Basically you can designate so many workers as essential that you make collective bargaining fruitless or meaningless."

In units where 80 per cent or more of staff are deemed essential, talks would be automatically sent to arbitration if they reach an impasse.

The legislation also says an arbitrator setting pay levels would have to give preponderant weight to "fiscal circumstances."

Separately, the budget bill would let cabinet say who is covered by federal conflict-of-interest rules. Those affected may have to disclose assets, sell securities or put them in a blind trust and accept restrictions on employment after leaving office.

"While I expect that the government feels that cabinet would use this power to cover someone like the governor of the Bank of Canada, the proposed power is sweeping," said Guy Giorno, a lawyer and former Harper chief of staff whose practice includes accountability and ethics laws.

"It could be used to bring backbench MPs under the Conflict of Interest Act, as well as Opposition leaders, House of Commons employees, and anyone else the cabinet wants."