Old Policies in Liberal "New Era" Labour Platform
A Backgrounder on the BC Liberals' Proposed Labour Policy Changes

By Diane MacDonald and David Fairey
June 2001

The "New Era" election platform of the BC Liberal Party contains over a dozen significant labour and employment policy changes, one half of which are to be implemented within 90 days of a Liberal government being sworn into office. However, there is very little that is new in most of these promises. In fact they will turn back the clock on labour relations and worker rights to the discredited Social Credit era of the 1980's.

Most significantly, within 90 days the Liberals plan to eliminate the right to strike in the education sector; reestablish secret ballot voting for all union certification applications; eliminate partial sectoral bargaining in the construction industry; and eliminate the "fair wage" policy on public construction.

Other promised labour and employment policy changes are a hodge-podge of further regressive measures: elimination of the right to strike by ferry workers; putting the new pay equity provisions of the Human Rights Act on hold until reviewed by "an independent task force"; open and low-bid tendering on all taxpayer funded public sector projects; introduction of unspecified "flexibility" into Employment Standards law; reducing Workers Compensation Board requirements for occupational health and safety prevention programs in the workplace; eliminating union hiring hall arrangements in highway construction and government sponsored silvicuture projects; and repeal a law that allows some union trusteed pension plans to suspend pension benefits to early retirees who "double dip" by continuing to work and draw wages in their trade.

In the sections below, we address the imminent key policy change issues, explaining why the current policy exists, and why the Liberals' proposed reforms are bad public policy.

Right to Strike & Essential Services

Elimination of the right to strike for education workers (within the first 90 days), for ferry workers (later), and possibly for Vancouver transit workers under the pretext that they perform essential services expands on a disturbing recent trend in federal and provincial legislation across Canada that interferes with the free collective bargaining process. This represents a violation of the internationally recognized trade union rights of public employees.

The International Labour Organization (ILO) has strongly criticized Canada's federal and provincial governments recently for violating ILO Convention No. 98, the Right to Organize and Collective Bargaining Convention. The ILO Committee of Experts on the "Application of Conventions has requested changes to the law in several provinces where non-essential service workers have been

denied the right to strike under essential service legislation. An "essential service" according to the ILO definition of occupations is "where there is existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population."

While they provide important public services, education, ferry and transit workers are not "essential" by this definition. Neither are hospital kitchen staff, porters and gardeners, or Vancouver port workers, all of whom have recently been legislated back to work. This happened despite the criticism of the ILO that these anti-democratic measures violate internationally recognized labour rights.

Education and ferry workers have never before been considered "essential" in British Columbia. While the Social Credit government included educational services in the essential services provision of the old Industrial Relations Act, this provision was never utilized. In at least two applications to do so before commissioner Ed Peck involving non-teaching staff, the Industrial Relations Commission refused to recognize education as "essential". Furthermore, there were many teacher strikes during the Social Credit government but no attempt was made to invoke the essential services provision of the old Act on account of disruption of delivery of education services.

The principle underlying essential service legislation in British Columbia, consistent with ILO Convention No.98, is that if the full withdrawal of labour services imposes immediate danger to the life, health or safety of the population it should be prohibited.

The Liberal election platform confuses "essential services" with "public inconvenience". Strikes in education, public transit and ferry services certainly inconvenience the public and impact on many people's lives, but they do not threaten or stop the provision of "essential services". In modern democratic societies, causing a public inconvenience should never be a legislative basis for suspension of the the fundamental right of workers to bargain collectively and, when needed, to strike.

Compulsory Union Certification Votes

Compulsory secret ballot voting has been bounced in and out of B.C.'s Labour Code several times over the past 30 years depending on the party in government. Under the current Code employees' wishes are paramount in deciding whether to be represented by a union.

The Code provides for a secret ballot vote when a union obtains between 45% and 54% support in the proposed bargaining unit. Support is demonstrated through the signing of membership cards. Membership cards must state: "In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining." However, if the union is able to demonstrate 55% or more support through membership cards that have been properly signed and dated by employees, the union is "automatically" certified as the bargaining agent without the need for a vote.

The Liberal platform policy is to eliminate the "automatic" union certification process without a vote where the overwhelming majority of employees have properly signed union cards. A compulsory voting regime like this existed under the former Social Credit government and the experience from that era was that it increased the tendency of employers to interfere with the wishes of their employees with respect to union representation. This is because prior to any vote there is almost inevitably an election-style campaign wherein the employer can unduly influence its employees. Although employers are currently prohibited from interfering with the formation of a union, they can communicate any fact or opinion reasonably held concerning their businesses to their employees. This ability to communicate provides many employers with the opportunity and incentive to engage in illegal tactics that intimidate their employees.

The whole premise behind collective bargaining is to level the playing field between employees and employers. Collective bargaining is a mechanism whereby vulnerable employees can collectively put pressure on a stronger employer. However, if that employer is given the opportunity to campaign against the union before that union is even certified, collective bargaining is defeated. There is ample evidence that during such campaigns employers have fired union supporters, threatened employees, and have told employees that any increased wages would result in the workplace shutting down. Not surprisingly, in these circumstances, employees become afraid to vote for a union. Such intimidation is unacceptable in a free and democratic society.

"Automatic" certification was added to the Labour Relations Code to protect employees from employers who cannot resist engaging in unfair labour practices in the time period leading up to a secret ballot vote.

With automatic certification the employer is still free to communicate and to raise concerns with its employees. However, if more than 55% of the employees opt for a union, the employer must communicate with the employees at the bargaining table where the employees are afforded the protection of a union. The bargaining table--not a political soap box--is the appropriate place for the employer to discuss with its employees the wages it can afford and other workplace issues.

Repeal of Bill 26

Bill 26 was passed into law in 1998. It amended the Labour Code to create special provisions for collective bargaining in the construction industry. Ever since, there has been a loud chorus from non-union construction employers, media commentators, and the Liberal party about the dire consequences of this law.

Bill 26 was a watered-down version of the earlier Bill 44, proposed but then withdrawn in 1997, which would have established multi-employer industry-wide bargaining and collective agreements in all construction sectors. Bill 26 limited the sectoral bargaining provision to the industrial, commercial and

institutional sectors, leaving bargaining in the residential sector outside of the sectoral bargaining system.

Bill 26 merely brought B.C. labour law into conformity with similar special legislation for construction labour relations in most of the rest of Canada. But the chorus of opposition to it predicted increased union power in an industry which had been dramatically de-unionized in the previous 14 years due to adverse labour laws. This opposition also predicted reduced competition, higher construction costs, less investment, fewer jobs and more labour-management animosity. However, none of these predictions have come to pass.

Since Bill 26 was passed, unionization in construction has continued to decline, and according to Labour Relations Board certification statistics the numbers of new union certifications and newly organized employees in construction has remained at an historically low level since 1998. In the period 1998 to 2000 the annual average number of new construction union certifications was 44 and involved 493 workers. In contrast, in the period 1993 to 1997, the corresponding numbers were 97 certifications involving 1,071 construction workers; and in the earlier period 1974 to 1983 the corresponding numbers were 262 certifications involving 1,302 construction workers.

Elimination of "Fair Wages"

The Skills Development and Fair Wage Act of 1994 (a Fair Wage policy has been in place since 1992) requires that all privately contracted work on public construction be done by certified trades people who receive a minimum standard of pay based on prevailing union rates. The Liberal platform proposal to elimate this Act is premised on the argument that it unnecessarily inflates the cost of public construction and adversely interferes with the competitive bidding process.

This proposed policy change also turns the clock back to 1976, when the Social Credit government scrapped the Public Works Fair Employment Act, which had required all public construction to be under a collective agreement. However, until 1997 there had been no empirical research to support the economic arguments against fair wage laws.

In 1996 the Government of Canada, through a Labour Management Partnership Program, provided financial assistance for an independent analysis of these issues. In May 1997 four researchers headed by Dr. Roslyn Kunin concluded that the Skills Development and Fair Wage policy had no measurable effect on total construction costs, and no adverse effects on the private contractor bidding process. Moreover, while it was found that the policy did not increase unit costs in a statistically significant way and did not reduce the number of bids, it did have the positive effects of increasing certainly for bidders and reducing the number and amount of contract change orders (where final costs exceed bid price).

All told, a careful analysis of the Liberal's priority labour law changes reveals that their origins are in old Social Credit anti-labour policy that had a negative impact on the province, and that their appeal is based on unsubstantiated ideological rhetoric. Kicking workers rights back to where they were 20 or 30 years ago is not the way to create more democratic and productive work places.

Diane MacDonald is a labour lawyer and David Fairey is a labour economist and labour relations consultant. Both are research associates with the BC Office of the Canadian Centre for Policy Alternatives (www.policyalternatives.ca).