



Bill 29 Update

PLEASE POST. PLEASE DISTRIBUTE.

January 2008

Compensation, improved job security main union goals as Supreme Court deadline approaches

HEU and its union partners in the Facilities Bargaining Association (FBA) resumed talks with government and health employers last week in an effort to reach agreement on a plan to implement last June's Supreme Court of Canada decision that struck down parts of *Bill 29*.

The B.C. government has just five months left to comply with the decision. HEU's *Bill 29* negotiating committee and other health unions are working hard to find a solution that includes compensation for members impacted by *Bill 29* in the past, while improving job security in the future.

Government had said that it planned to wrap up talks by the end of December. But now government has agreed to continue talks in January.

Government plans to begin drafting legislation to implement the Court's decision by the end of January, to be tabled in the legislature in March.

If there is no negotiated agreement, that legislation could contain language that restricts health care workers' rights to negotiate contracting-out protection in the future, leading to the possibility of further court action.

Unions seek stronger job security protections

HEU secretary-business manager Judy Darcy says that a negotiated solution that provides certainty, stability and improved protection for members is preferable to the imposition of new contracting-out legislation.

But reaching that agreement won't be easy as government has been clear that it wants to maintain its ability to contract out health care services even when it results in layoffs.

And the threat of future layoffs was underscored last month when government announced that it would form a "shared services organization" to look at consolidating "non-clinical" services across health authorities – and potentially privatizing these services.

BILL 29 SUPREME COURT DECISION

- The Supreme Court of Canada issued its decision on June 8, 2007 after a five-year legal battle launched by HEU and other health unions just months after *Bill 29* was passed in 2002.
- The Court found that section 6(2), 6(4) and 9 of *Bill 29* violated the Freedom of Association provisions in the *Canadian Charter of Rights and Freedoms*.
- Sections 6(2) eliminated any contracting-out protections from health care collective agreements – past and future – affecting non-clinical services
- Section 6(4) eliminated any provisions that required consultation before contracting out non-clinical services
- Section 9 restricted layoff and bumping language in collective agreements. These restrictions expired in 2005 and are no longer in effect.
- The effect of the ruling was to entrench collective bargaining as a right protected under the charter.
- The Supreme Court suspended its declaration for one year – until June 2008 – so that the government of B.C. could deal with the repercussions of the decision.
- The B.C. government is required to engage in meaningful consultations and good faith negotiations with health unions and must respect union members' charter-protected right to free collective bargaining.
- As a result, the government agreed to talks on the implementation of the Court's decision.

continued...





Bill 29 Update

Initially, the new bureaucracy would target payroll, information technology, purchasing and other services for centralization and possible privatization. About 1,350 union members work in those areas.

“We’re certainly willing to work with employers to improve service delivery,” says Darcy. “But the last thing our health care system needs is another damaging round of privatization and contracting out.

“Every HEU member has a stake in protecting jobs and services against layoffs and privatization. That’s why our negotiating team is working hard to secure provisions that will expand protection for HEU members’ jobs in the future.”

Compensation for affected members key to settlement

HEU and its union partners have told government and health employers that a negotiated solution must include compensation for workers who were directly affected by *Bill 29*.

The unions say that the decision of the Supreme Court is retroactive and workers whose charter rights were violated must be compensated for the violation of those rights.

The government has taken the opposite position. They say that the Court’s decision applies only to the future and that it has no obligation to workers who were affected by *Bill 29* in the past.

Despite these positions, both sides have been engaged in exploratory discussions about a range of issues, including compensation and improvements to job security.

“There will be no negotiated settlement unless it includes a compensation package for members who were impacted by *Bill 29*,” says Darcy.

“The union has spoken to thousands of affected members and former members – at information meetings, through phone surveys and via email.

“We estimate that more than 9,000 workers were laid off as a result of *Bill 29*. And for each of those workers, there’s a story of hardship and loss. HEU is committed to negotiating a compensation package for these workers as part of any settlement.

“We are confident in our legal position that last June’s ruling is retroactive. However, negotiating a compensation package is preferable to taking the issue to the courts which could mean a time-consuming legal challenge would further delay justice for these members.”

WHERE TO NOW?

JANUARY

- Talks continue with all bargaining associations
- B.C. government drafts legislation to implement Court decision

FEBRUARY

- Spring session of the legislature opens February 12.

MARCH

- Legislation to implement Court decision expected to be tabled in the B.C. legislature

MAY

- Spring session ends May 29

JUNE

- Deadline for B.C. government to comply with Supreme Court decision.

continued...



Bill 29 Update

HEU and FBA launch talks guided by set of principles

An initial meeting between the B.C. government and representatives of the four health care bargaining associations was held on September 6, 2007.

At this time, it was agreed that all four bargaining associations would hold further joint meetings with government on broad issues including new legislation.

On issues specific to individual bargaining associations and their collective agreements, it was agreed that there would be separate talks with government and health employers (represented by HEABC).

The Facilities Bargaining Association (FBA) began its meetings with government and HEABC on October 4. The other associations – the Community Bargaining Association, the Health Science Professionals Bargaining Association and the Nurses Bargaining Association – did not commence their discussions with HEABC and government until November.

HEU's *Bill 29* negotiating team is led by secretary-business manager Judy Darcy. The team also includes president Fred Muzin, financial secretary Donisa Bernardo, and two members from each of the Provincial Executive (Victor Elkins and Carol Kenzie) and Provincial Bargaining Committee (Chris Duckett and Joanne Dickie).

The full PE and PBC have also held joint sessions over the past few months to consider the union's approach to the talks.

The team is being assisted by senior staff and the union's legal team is consulted on a regular basis. As the largest union in the FBA, HEU speaks for the unions in the talks.

The FBA opened discussions with a set of principles that included a recognition of the impact of *Bill 29* on both health care workers and on health services; the restoration of members' charter rights to collective bargaining; and improvements to health care delivery.

Over the next few weeks, the FBA made a series of presentations that called into question the effectiveness of the government's contracting out experiments over the last five years in areas such as housekeeping and seniors' care.

The unions also debunked the government's claim that extensive privatization of health services was necessary because the health care system was financially unsustainable.

As part of this process, the FBA unions also demanded the disclosure of a number of documents related to the government's health privatization experi-

continued...

BILL 29 IS NOT BILL 37

Bill 29 was passed by the B.C. Liberal government in 2002. It eliminated the contracting-out protections in health care collective agreements and cleared the way for the most extensive privatization of health services in Canada – and the layoff of approximately 9,000 workers.

Bill 37 was passed by the B.C. Liberal government in 2004 during a legal strike in the facilities subsector. *Bill 37* included back-to-work provisions and slashed wages by 15 per cent.

The Supreme Court of Canada decision struck down sections of *Bill 29*.

***Bill 37* was not part of this constitutional challenge.**



Bill 29 Update

ments, including the details of more than \$650 million in commercial contracts that were awarded to private corporations after the passage of *Bill 29*.

“The Court was especially critical of government’s failure to hold meaningful consultations with unions before passing *Bill 29*,” says Darcy. “In particular, the Court cited government’s failure to produce evidence supporting its actions, or to consider alternatives.”

The B.C. government has provided some material to the FBA subject to a strict non-disclosure agreement, but in most cases, the material is heavily censored and contains fewer details than would be available under provincial freedom of information legislation.

The unions repeatedly asked government and health employers for information related to future contracting-out plans, starting in October.

But it wasn’t until mid-December, that health employers revealed that they would form a shared services organization that could lead to more contracting out and privatization.

“We are concerned that despite the Court ruling, the B.C. government has laid out a plan for future privatization and contracting out in the health care sector,” says Darcy.

“That’s why it is critical to secure an agreement that would limit the damage that can be done to quality health services and members’ jobs in the future.”

The next few weeks

Since mid-December, the FBA (and the other bargaining associations) have been exploring possible avenues for a settlement with government and health employers.

The FBA and all of the other bargaining associations continue to meet with government and HEABC in January.

“In contrast to the last few months, I expect that there will be significant developments in the *Bill 29* talks over the next few weeks,” says Darcy.

“The union is committed to reaching a solution that improves health care, compensates members’ whose charter rights have been trampled, and results in improved job security.”

STAY IN TOUCH!

- Visit www.heu.org
- Sign up for HEU news by e-mail
- Watch the HEU bulletin board at your work site