

# POST-SECONDARY INSTITUTIONS

## INTRODUCTION

The legislation governing publicly funded post-secondary institutions contains provisions regarding labour relations in Alberta's public colleges, universities and technical institutes. These provisions reflect the different relationship between employees and employers in academic institutions. This policy discusses:

- bargaining units in public post-secondary institutions;
- labour relations pertaining to non-academic staff;
- labour relations pertaining to academic staff; and
- labour relations in private colleges.

Labour relations in the K-12 system is discussed in [Teachers, Chapter 31\(e\)](#) above.

## BARGAINING UNITS IN POST-SECONDARY INSTITUTIONS

Labour relations in Alberta's public colleges, universities and technical institutes is governed by the *Colleges Act*, *Universities Act*, and *Technical Institutes Act* respectively. These acts give each institution's Board of Governors the power to hire employees. The Board designates employees as excluded employees or members of the non-academic staff association bargaining unit or the academic staff association bargaining unit.

Section 29 of the *Universities Act* excludes academic staff from coverage under the [Labour Relations Code](#) or the [Employment Standards Code](#):

29 The *Employment Standards Code* and the *Labour Relations Code* do not apply to the interim governing body, the board, the academic staff association or the academic staff members of the university.

This provision is mirrored in the other post-secondary acts. Schedule 1 of PSERA also excludes academic staff from its purview. In the place of the [Labour Relations Code](#) are a series of provisions in the post-secondary acts that create an academic staff association at each institution. For example, the *Universities Act* states:

24(1) For each university there shall be an academic staff association.

(2) Each academic staff association is a corporation and consists of the academic staff members of the university.

(3) Each academic staff association shall have the exclusive authority, on behalf of the academic staff members, to negotiate and enter into an agreement.

The acts then go on to discuss requirements regarding academic staff association bylaws and management. The acts also outline the bargaining process and certain deemed provisions (such as dispute resolution) if a collective agreement is silent on the matter.

## **LABOUR RELATIONS AND NON-ACADEMIC STAFF**

Non-academic staff associations are governed by [PSERA](#). Most non-academic staff in the colleges, universities and technical institutes are organized. Some are locals of parent unions such as AUPE or CUPE. Others, such as the Non-Academic Staff Association at the University of Alberta, are independent unions. Treat all applications, complaints and references filed by non-academic staff associations as you would other applications filed under [PSERA](#).

## **LABOUR RELATIONS AND ACADEMIC STAFF**

The post-secondary legislation stipulates that the [Labour Relations Code](#) and the [Employment Standards Code](#) do not apply to Boards of Governors, the academic staff associations or the academic staff members. Similarly, they are excluded from [PSERA](#). In place of the [Code](#), the acts provide for the negotiation and enforcement of a collective agreement between the Board of Governors and the academic staff association.

### ***The Labour Relations Framework***

Section 34 of the *Colleges Act* sets out a labour relations framework by stipulating:

- 34(1) When the Lieutenant Governor in Council after the commencement of this section establishes an additional college, or when an agreement referred to in section 38 expires, the board and the academic staff association of the college shall enter into negotiations for the purpose of concluding an agreement.
- (2) An agreement shall with respect to the employment of academic staff members contain provisions respecting at least the following matters:
- (a) terms and conditions of employment;
  - (b) teaching responsibilities;
  - (c) vacation leaves, leaves of absence and sick leaves to be allowed;
  - (d) salaries and remuneration to be paid and the establishment of salary and wage schedules for that purpose;
  - (e) procedures respecting the settlement of differences between the parties arising from the interpretation, application or operation of the agreement;
  - (f) conditions and procedures governing reassignment, suspension or dismissal by the board;
  - (g) procedures respecting negotiations of future agreements, including procedures for the final resolution of disputes that may arise during negotiation of future agreements;
  - (h) if a procedure referred to in clause (g) is compulsory binding arbitration, permission for either party to initiate binding arbitration for the final resolution of disputes that may arise during negotiation of the agreement.

It also provides for the extension of existing agreements past their expiry date (similar to Section 130 of the [Code](#)):

37 The provisions that were contained in an agreement pursuant to section 34(2)(e) or the provisions of section 39, as the case may be, shall apply to a difference arising between a board and an academic staff association during the period between the date of termination of an agreement and the date of entry into a new agreement as if the agreement had remained in effect

### ***Dispute Resolution***

The post-secondary legislation also contains a set of deemed provisions that operate to the extent a collective agreement is silent. These provisions provide a means by which interest or rights disputes may be resolved.

39(1) If an agreement does not contain the provisions required under section 34(2)(e), the agreement shall be deemed to contain those of the following provisions in respect of which it is silent:

- (a) If a difference arises as to the interpretation, application, operation or contravention or alleged contravention of this agreement or as to whether that difference can be the subject of arbitration, the parties agree to meet and endeavour to resolve the difference.
- (b) If the parties are unable to resolve a difference referred to in clause (a), either party may notify the other in writing of its desire to submit the difference to arbitration.
- (c) The notice referred to in clause (b) shall (i) contain a statement of the difference, and (ii) specify a name or a list of names of the person or persons whom the party submitting the notice is willing to accept as the single arbitrator.
- (d) On receipt of a notice referred to in clause (b), the party receiving the notice, (i) if it accepts the person or one of the persons suggested to act as arbitrator shall, within 7 days, notify the other party accordingly and the difference shall be submitted to the arbitrator, or (ii) if it does not accept any of the persons suggested by the party sending the notice shall, within 7 days, notify the other party accordingly and send the name or a list of names of the person or persons it is willing to accept as the single arbitrator.
- (e) If the parties are unable to agree on a person to act as the single arbitrator, either party may request the chairman of the Labour Relations Board under the *Labour Relations Code* in writing to appoint a single arbitrator.
- (f) The arbitrator may, during the arbitration, proceed in the absence of any party or person who, after notice, fails to attend or fails to obtain an adjournment.
- (g) The arbitrator shall inquire into the difference and issue an award in writing, and the award is final and binding on the parties and on every employee affected by it.
- (h) The parties agree to share equally the expenses of the arbitrator.
- (i) Except as permitted in clause (j), the arbitrator shall not alter, amend or change the terms or conditions of the agreement.
- (j) If the arbitrator by his award determines that an employee has been discharged or otherwise disciplined by an employer for cause and the agreement does not contain a specific penalty for the infraction that is the subject matter of the arbitration, the arbitrator may substitute any penalty for the discharge or discipline that to him seems just and reasonable in all the circumstances.

(2) If an agreement does not contain the provisions required under section 34(2)(g) or (h), the agreement is deemed to contain those of the following provisions in respect of which it is silent:

- (a) on or after the expiry of an agreement, either party may notify the other in writing of its desire to submit a dispute to arbitration;

- (b) the notice referred to in clause (a) shall (i) contain a list of the matters in dispute, and (ii) specify a name or a list of names of the person or persons whom the party submitting the notice is willing to accept as a single arbitrator;
- (c) on receipt of a notice referred to in clause (a), the party receiving the notice, (i) if it accepts the person or one of the persons suggested to act as an arbitrator, shall, within 7 days, notify the other party accordingly and the dispute shall be submitted to the arbitrator, or (ii) if it does not accept any of the persons suggested by the party sending the notice, shall, within 7 days, notify the other party accordingly and send the name or a list of names of the person or persons it is willing to accept as a single arbitrator;
- (d) if the parties are unable to agree on a person to act as a single arbitrator, either party may, in writing, request that the Minister appoint a single arbitrator;
- (e) the arbitrator may, during the arbitration, proceed in the absence of any party or person who, after notice, fails to attend or fails to obtain an adjournment;
- (f) the arbitrator shall consider the position of the parties on each matter in dispute and try to induce the parties to come to a fair and amicable resolution;
- (g) if the arbitrator is unable to bring the parties to a resolution, he shall, within 20 days of his appointment or within a longer period agreed on by the parties or fixed by the Minister,
- (h) make an award in writing concerning all the matters in dispute between the parties and send the award to each of the parties;
- (i) the parties agree to share equally the expenses of the arbitrator;
- (j) the award of the arbitrator is final and binding on the parties to the dispute and shall be included in the terms of the agreement.

Note that while the deemed provisions provide for the resolution of a bargaining impasse via binding arbitration, a collective agreement **may** allow academic staff members to strike. Currently, most collective agreements stipulate binding interest arbitration.

## **LABOUR RELATIONS IN PRIVATE COLLEGES**

There are over 100 private educational institutions operating in Alberta. Private colleges offering degrees are regulated through the Private Colleges Accreditation Board that is established in the *Universities Act*. In the past, private institutions with degree-granting power were not-for-profit, religiously affiliated colleges such as Augustana University College. More recently, other religiously affiliated colleges as well as for-profit colleges (such as the DeVry Institute of Technology) have had programs accredited by the Private Colleges Accreditation Board. Most private colleges focus on vocational programs.

The Labour Relations Board has not yet ruled on what legislation governs labour relations in these institutions. Private colleges do not appear covered by the existing post-secondary legislation. Similarly, private colleges do not appear to be employers as defined under Section 1(m) of [PSERA](#). For these reasons, it seems probable that the [Labour Relations Code](#) would govern labour relations for private colleges.