

BACKGROUNDER
Outline of Changes Presented in Legislation

Status of Issues Reviewed by the Employment Relations Committee

The following highlights the Provincial Government's legislative responses to the issues discussed by the Employment Relations Committee. Not all items were supported by all parties:

	Issue	Provincial Government's Response	Status
1.	Amend the <i>Labour Relations Act</i> to provide that the initial request for conciliation services is for a conciliation officer and not a conciliation board, state that the parties have the ability to request the appointment of a conciliation board following the commencement of a strike/lockout; and re-order the legislation to reflect a more sequential approach to the strike/lockout process.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to ensure the process is more streamlined and the strike/lockout section of the <i>LRA</i> reordered to reflect a more sequential approach to the process. Given the substantive legislative amendments required, legislation will be introduced at a later date.	Accept
2.	Amend the <i>Labour Relations Act</i> to provide for the appointment of a first agreement mediator 60 days (or 75 by mutual agreement) after notice to bargain a first collective agreement is served and implement timelines for the Labour Relations Board to deal with requests for imposition of first collective agreements.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to require that the minister appoint a first collective agreement mediator where the parties have failed to conclude a first collective agreement. In addition, the Provincial Government will seek to amend the <i>Act</i> to impose time frames for the Labour Relations Board in relation to the imposition of first collective agreements.	Accept

	Issue	Provincial Government's Response	Status
3.	Delete section 102 of the <i>Labour Relations Act</i> relating to Danger to Industry.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to remove the Lieutenant-Governor in Council's authority to order that a trade union conduct a secret ballot of the employees to determine their wishes with respect to resumption of work where the continuance of a strike or lockout poses a threat to an industry or geographic area of the province.	Accept
4.	Amend the <i>Public Service Collective Bargaining Act</i> to parallel the <i>Labour Relations Act</i> with respect to access to the Labour Management Arbitration Committee.	Government will seek to amend the <i>Labour Relations Act</i> to clarify that the Labour Management Arbitration Committee applies to the <i>Labour Relations Act</i> and the <i>Public Service Collective Bargaining Act</i> .	Accept
5.	Institute a card-based certification system with government amending the legislation to allow that in instances where 65 per cent of the employees in the bargaining unit sign a union membership card, automatic certification would occur. If 40 per cent to 64 per cent of the employees sign cards, a certification vote would be required. *	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to amend the certification process regarding the requirement for a representation vote.	Accept

	Issue	Provincial Government's Response	Status
6.	Introduce a provision in the <i>Labour Relations Act</i> to recognize the right of an employer to communicate with employees as long as the employer does not do so in a manner that is intimidating, coercive, threatening or attempts unduly to exert influence. *	The Provincial Government will seek to introduce a provision in the <i>Labour Relations Act</i> to clarify the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.	Accept
7.	Amend the <i>Labour Relations Act</i> regulations to clarify in the definition of applicant that different locals of the same union that have been unsuccessful in a certification drive cannot make application for the same group of employees for a six-month period. *	With the input of the Labour Relations Board, the Provincial Government will seek to amend the <i>Labour Relations Board Rules of Procedure under the Labour Relations Act</i> to provide this clarity.	Accept
8.	Amend the <i>Labour Relations Act</i> to provide that upon a request by either party to the Labour Relations Board or upon the request of the employer in the <i>Public Service Collective Bargaining Act</i> , the Board conduct a vote on offer before or after the commencement of a labour dispute. *	The Provincial Government will seek to amend the <i>Labour Relations Act</i> and the <i>Public Service Collective Bargaining Act</i> , to allow either party (the employer in the case of the PSCBA) during collective bargaining to request that a vote of the employees of the bargaining unit be conducted to accept or reject either party's (the employer in the case of the PSCBA) most recent offer. As this is a new requirement for the Labour Relations Board, proclamation will occur once the Board advises that appropriate processes and procedures are established.	Accept

	Issue	Provincial Government's Response	Status
9.	Amend the <i>Public Service Collective Bargaining Act</i> to provide parties to collective bargaining with the ability to make complaints of unfair labour practice including failure to bargain in good faith. *	The Provincial Government will seek to amend the <i>Public Service Collective Bargaining Act</i> to allow parties to collective bargaining to file unfair labour practice complaints with the Labour Relations Board.	Accept
10.	Amend the <i>Public Service Collective Bargaining Act</i> to enact a bridging provision to permit bargaining rights to follow an employer who is moved from the <i>Public Service Collective Bargaining Act</i> to the <i>Labour Relations Act</i> and reverse. *		Status Quo
11.	Amend the <i>Labour Relations Act</i> to establish a mechanism whereby one of the parties to collective bargaining could request binding arbitration after a labour dispute has been ongoing for a period of time. *		Status Quo
12.	Amend the <i>Labour Relations Act</i> to introduce an anti-replacement worker provision. *		Status Quo

	Issue	Provincial Government's Response	Status
13.	Amend the <i>Labour Relations Act</i> such that during a certification vote the majority of those voting determine the outcome of the vote. *		Status Quo
14.	Amend the <i>Labour Relations Act</i> to establish limitations around secondary picketing. *		Status Quo
15.	Amend the <i>Labour Relations Act</i> to provide the Labour Relations Board with the authority to officially recognize a collective bargaining relationship, voluntarily entered into between an employer and union. *		Status Quo
16.	Amend the <i>Labour Relations Act</i> to establish a mechanism for workers to be declared as essential workers. *		Status Quo

	Issue	Provincial Government's Response	Status
17.	Amend the <i>Public Service Collective Bargaining Act</i> to reflect the definition of an excluded employee in the <i>Labour Relations Act</i> . *		Status Quo

* - denotes non-consensus item

Status of Recommendations on the Special Project Order Provisions of the *Labour Relations Act*

The following highlights the Provincial Government's legislative responses to the February 2012 Review of the Special Project Order legislation conducted by Mr. James Oakley:

	Recommendation	Provincial Government's Response	Status
1.	Special Project Order legislation be continued with the effect that special projects are encouraged as a means to secure stable construction industry labour relations and to promote economic development.		Accept
2.	The Lieutenant Governor-in-Council continue to have authority to issue Special Project Orders.		Accept
3.	There be no statutorily-mandated role for the Construction Labour Relations Association of Newfoundland and Labrador (CLRA) in the negotiation or administration of special project collective agreements.		Accept
4.	Project proponents be encouraged by the Government of Newfoundland and Labrador to provide a meaningful role for the CLRA with respect to the negotiation and administration of special project collective agreements.	The Provincial Government encourages project proponents to provide a meaningful role to the CLRA with respect to the negotiation of special project collective agreements.	Accept
5.	A special project be permitted without the necessity for a geographic site. The words "within a prescribed geographic site" should be deleted from the definition of "special project" in paragraph 2(1)(u) of the <i>Act</i> .	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to remove the requirement of a geographic site from the definition.	Accept

	Recommendation	Provincial Government's Response	Status
6.	A special project should have a prescribed geographic site or scope of work where deemed appropriate. The Lieutenant-Governor in Council should have the authority to prescribe the geographic site or scope of work for the special project under subsection 70(2). Paragraph 70(2)(a) should be amended to read “the geographic site or scope of work to which the declaration relates.”	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to allow the Lieutenant Governor-in-Council to prescribe the geographic site or scope of work to be included or excluded from a Special Project Order.	Accept
7.	Definition of “special project” in paragraph 2(1)(u) be amended so that it will require a construction period exceeding “2 years”, in place of “3 years.”	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to redefine “special project” to reduce the construction period required from three years to two years.	Accept
8.	No change to that part of the definition of “special project” in paragraph 2(1)(u) that requires “an undertaking for the construction of works designed to develop a natural resource or establishment of a primary industry”, and there be no change to the definition of “special project” to include “fabrication.”		Accept
9.	“Ancillary work, services and catering” be removed from the definition of “special project” in paragraph 2(1)(u). “Ancillary work and services” should also be removed from the description of special projects at the Bull Arm site under paragraph 70(1)(b). “Ancillary work, services and catering” may be prescribed as part of the special project under subsection 70(2).		Reject

	Recommendation	Provincial Government's Response	Status
10.	Alternate tenants at the Bull Arm site be permitted by using multiple Special Project Orders that overlap temporally and geographically. Subsection 70(2) of the <i>Act</i> should be amended to permit the Lieutenant Governor-in- Council to prescribe the scope of work or geographic area of the Bull Arm site that is included in or excluded from the Order, and the extent to which ancillary work and services are included in the Order.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to clarify that special project orders may overlap temporally and geographically.	Accept
11.	A subsection be added to section 70 of the <i>Act</i> to state that a Special Project Order is not invalid by reason of the fact it overlaps temporally and geographically with another Special Project Order.	Government will seek to amend the <i>Labour Relations Act</i> to clarify that special project orders may overlap temporally and geographically.	Accept
12.	The Lieutenant Governor-in-Council be authorized to prescribe in subsection 70(2), that a scope of work or geographic area be excluded from a Special Project Order, such authority may be used to give effect to the overlap temporally or geographically of Special Project Orders.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to clarify that special project orders may overlap temporally and geographically.	Accept
13.	The Labour Relations Agency prepare and publish a document outlining the procedure for a proponent to apply for a Special Project Order issued by the Lieutenant Governor in Council.		Accept
14.	The Labour Relations Board continue to have authority to decide questions related to special projects under subsection 70(11) of the <i>Act</i> .	In addition, the Provincial Government will seek to amend the <i>Labour Relations Act</i> to allow the minister to refer certain questions to the Labour Relations Board both before and after a special project order declaration.	Accept

	Recommendation	Provincial Government's Response	Status
15.	A collective agreement prescribed by the Lieutenant Governor-in-Council for the purpose of the special project under paragraph 70(2)(d) of the <i>Act</i> , is a valid collective agreement notwithstanding subsection 64(2) of the <i>Act</i> .		Accept
16.	Paragraph 70(2)(b) be amended to include the singular “employer” and “trade union.”		Reject
17.	The Labour Relations Board no longer have the authority to issue a Special Project Order, and that section 69 of the <i>Act</i> be repealed.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to remove the Labour Relations Board’s authority to issue Special Project Orders.	Accept
18.	A special project collective agreement be reviewed to determine whether it contains an adequate trade jurisdiction dispute resolution procedure, prior to being prescribed by the Lieutenant Governor-in-Council as a collective agreement for the purpose of a Special Project Order.	The Provincial Government will continue to review special project collective agreements to ensure they contain a trade jurisdiction dispute resolution procedure.	Accept
19.	Amendments to the <i>Labour Relations Act</i> not affect existing Special Project Orders.		Accept

	Recommendation	Provincial Government's Response	Status
20.	Stakeholders and the public be consulted prior to amendment of the Special Project Order provisions of the <i>Labour Relations Act</i> arising from the consultant's report.		Accept

Status of Recommendations on the Voisey's Bay Industrial Inquiry Commission

The following highlights the Provincial Government's legislative responses to the May 2011 Report of the Voisey's Bay Industrial Inquiry Commission:

	Recommendation	Provincial Government's Response	Status
1.	Provincial Government re-examine the mechanisms by which it facilitates collective bargaining to take account of a) the organizational structure of multi-national corporations, b) the need to ensure that such corporations respond to Canadian labour relations values, and c) the relative economic weight of the parties in the collective bargaining relationship. Such re-examination must involve government in all its mandates vis-à-vis such enterprises and not simply the traditional labour relations regulating mandate. Such re-examination must recognize that, where the current adversarial model creates advantages to any of the participants, such advantages will not easily be foregone.	The Minister Responsible for the Labour Relations Agency will continue to make representation to the Government of Canada with regard to enhancements to the <i>Investment Canada Act</i> review process to include a labour relations dimension. Government will be requesting that business and labour work with Government to prepare a draft consensus Corporate Social Responsibility Policy for Labour Management Relations for Government's future review.	Accept
2.	Provincial Government seek to amend the <i>Labour Relations Act</i> to provide that all collective agreements contain a provision that a mandatory Labour Management Committee be established.	The Provincial Government will seek to amend the <i>Labour Relations Act</i> to require that parties to a collective agreement establish a labour management committee where one of the parties makes a written request.	Accept
3.	Provincial Government re-evaluate the use of conciliation boards and appoint such boards to report in circumstances where it appears that the traditional pressures of the strike/lockout model are unlikely to be effective in bringing about a collective agreement.	The Provincial Government will continue to assess the use of conciliation boards and use them when it is felt that their appointment would be effective in assisting the parties reach a collective agreement.	Accept

	Recommendation	Provincial Government's Response	Status
4.	<p>Commission recommends that:</p> <p>(a) the Labour Relations Board establish dates for the hearing of unfair labour practices immediately upon the receipt of them by the Board.</p> <p>(b) the Labour Relations Board exercise its authority to abridge the time for filing of 'Replies to Applications' and 'Replies to Replies' to one-half of the current time periods in unfair labour practice complaints and in any other matter where urgency is indicated.</p> <p>(c) Provincial Government allocate funding to the Labour Relations Board so that the Board can establish and publish, in advance, an annual calendar of at least five hearing dates per month to be used as matters necessitate, with priority being given to matters of urgency.</p> <p>(d) Provincial Government seek to amend section 18 of the <i>Labour Relations Act</i> dealing with powers of the Board in order to specifically authorize the Board to limit the scope of any hearing which it might order.</p> <p>The Commission also recommends that government seek to amend the remedial provisions of the <i>Labour Relations Act</i> so as to provide the Labour Relations Board with the authority to fashion those remedies it deems necessary to redress the consequences of a party's failure to bargain in good faith.</p>	<p>With the input of the Labour Relations Board, the Provincial Government will move to amend the <i>Labour Relations Board Rules of Procedure</i> under the <i>Labour Relations Act</i>. In addition, Government will seek to amend the <i>Labour Relations Act</i> to provide additional powers to the Labour Relations Board to address the consequences of failure to bargain in good faith.</p>	Accept
5.	Provincial Government seek to amend the <i>Labour Relations Act</i> to provide a process for the imposition of a collective		Reject

	Recommendation	Provincial Government's Response	Status
	<p>agreement in the following circumstances when:</p> <ul style="list-style-type: none"> a) one of the employer or the bargaining agent makes application; b) the applicant shall have been found by the Labour Relations Board to have bargained in good faith; c) all of the conditions precedent to a strike or lockout have been met; d) it is apparent that strike and/or lockout mechanisms have been ineffective in bringing about resolution of the dispute; e) the Labour Relations Board is satisfied that the collective bargaining process has failed; and f) the public interest requires the imposition of a collective agreement. <p>Provincial Government seek to amend the <i>Labour Relations Act</i> to provide that, once an application is successful in establishing that the public interest requires the imposition of a collective agreement, the following steps should be taken:</p> <ul style="list-style-type: none"> a) the employer and the bargaining agent shall have a further 30 days in which to reach a collective agreement; b) failing agreement, the Labour Relations Board shall refer the dispute to a three-person arbitration panel appointed by the Board to settle the terms of a collective agreement between the employer and the bargaining agent; c) the arbitration panel shall have the powers of a conciliation board under the <i>Act</i>; and the panel's decision on the collective agreement shall be binding on the parties for a period of not less than one year. 		

	Recommendation	Provincial Government's Response	Status
6.	Vale and the United Steelworkers (USW) jointly engage the Innu Nation and the Nunatsiavut Government in an effort to ensure that the aboriginal peoples of Labrador as stakeholders in the Voisey's Bay enterprise are fully able to participate in the benefits associated with the spirit and intent of the Impacts and Benefits Agreements.		Accept