BLAIR–CHAHLEY–KLASSEN

J. ROBERT W. BLAIR
PHONE 780 – 919 – 3357
bobb@bcklawyers.ca

LEANNE CHAHLEY
PHONE 780 – 964 – 2461
leannec@bcklawyers.ca

CHERIE KLASSEN*
PHONE 780 – 951 – 9153
cheriek@bcklawyers.ca

OFFICE 780 – 951 – 9153
FAX 1 – 877 – 835 – 8920
WEB bcklawyers.ca

By email only

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Gavin Leeb
Director, Legal Branch
Canadian Union of Public Employees
1375 St. Laurent Blvd,
Ottawa, ON K1G 0Z7

Dear Mr. Leeb:

Re: Alberta's new legislation mandating classification of the activities that union dues are spent on; the new s. 26.1 of the Labour Relations Code from Bill 32 and the new Election of Union Dues Regulation
Analysis and Opinion regarding CUPE
Your file RT-2020-006

The Alberta government passed the *Election of Union Dues Regulation* under the authority set out in the *Labour Relations Code* (the "Code"), on December 15, 2021. At the same time it proclaimed parts of Bill 32 regarding the new section 26.1 of the Code into effect on February 1, 2022 and other parts of section 26.1 to be in effect as of August 1, 2022. Other related statutes were similarly changed effective the same dates.

The overall impact is that as of February 1, 2022, trade unions in Alberta need to begin the process set out under the new section 26.1 of the Code and the total of section 26.1 will apply as of August 1, 2022.

I have attached an extract of the new section 26.1 of the Code from Bill 32 and the full new Regulation to this letter.

You have asked me to provide you with a written opinion regarding the overall obligations set out in these new laws with a specific focus on how the payments from Alberta CUPE locals to CUPE National will be dealt with. I will also include a general assessment of the new statutory scheme.

The Bottom Line for CUPE National

Before I go further and explain this surprisingly complex set of new requirements, in summary, after careful analysis of the new laws, in my opinion the payments that CUPE local unions in Alberta make to CUPE National to maintain their local union charter and existence are payments made for administration of those local unions and thus core activity under section 3(3)(h) of the new Regulation.

My detailed analysis of the overall operation of the new laws and the basis for this opinion follows.

Overview of section 26.1 of the Code

Before we look at the details of what are core and non-core activities as defined by these new laws, it is helpful to understand the overall changes that section 26.1 together with the new Regulation will make when fully enacted as of August 1, 2022.

Trade Unions in Alberta will now have to take the following steps:

- Employers have obligations to provide information about the dues payers and new hires in the bargaining unit to the union to allow it to contact the dues payers for the purpose of providing information about the division of union dues between core and non-core activities and for the purpose getting elections from the employees.

- By August 1, 2022 and at least once a year (or when substantial spending changes are made) the union must determine which part of the "union dues, assessments or initiation fees" (which I will refer to as "union dues") that members will pay in the coming year will be spent on core activities and which are spent on non-core activities. The union can determine this as a dollar amount or as a percentage.

- The Regulations. 3(5) provides that if a trade union pays union dues "with respect to an activity" to another party, including a parent trade union or trade union organization, "that activity will be considered a core activity only if the trade union is able to demonstrate that the union dues, assessments or initiation fees have been used or will be used by the other party for a core activity."

- As a result of this section Alberta unions are seeking information from others that they work with, including parent unions like CUPE, union groups like federations of labour, union partners like Friends of Medicare, and other organizations that they work with to first aid the union in

making its assessment of its spending of union dues and also to potentially assist the union with evidence to defend a complaint to the Labour Relations Board. I will address this issue further later in the opinion.

- The union must inform the dues payers in the bargaining unit of that determination, including the dollar or percentage amount of each person's union dues paid for core and for non-core activities and provide a list of the activities and causes and the persons or entities paid in respect of those activities and causes that are non-core activities.

- If there are any non-core activities for which union dues are used for, then the union must provide each dues payer in the bargaining unit a form so that the member can elect in writing to pay the non-core portion of the union dues. Both the dues payer and an officer of the union must sign the form. While this process is called an "election" it is important to note that there is no membership vote, this is not any kind of voting or majority decides process. Each member has the right to personally opt in to paying the non-core portion of their union dues by signing a written document that records their decision.

- In the second and subsequent years, the law is clear that the union must assess its spending and communicate the amounts or proportions of union dues that are going to be spent on core and non-core activities. Each year dues payers must be given an opportunity to make an election to agree to pay non-core dues or to revoke their existing election to pay non-core dues. Section 10 of the Regulation provides that an election is in effect until it is revoked so as long as the union gives all dues payers the opportunity to elect or revoke. The union does not have to collect new elections in favour of paying non-core dues from those dues payers who made that same election last year. This would also apply when there is a substantial change in the non-core proportion or amount of union dues - the opportunity to elect or revoke must be given but if a dues payer is not changing their position, they do not have to sign a new written election form. It may well be that there is more information on this aspect of the Regulation before we get to the second year of this new legislation.

- If the union has determined that there are no non-core activities that are paid for with dues payer's union dues, assessments and/or initiation fees, then the process for that union this year will stop once that union communicates that it has assessed that all of the union dues are spent on core activities to the members and the union has communicated to the employer that there are no non-core duties that require the individual decisions or "elections" regarding payment to them. This is subject to any applications to the Labour Relations Board brought by dues payers

challenging the determination that all union dues are spent on core activities.

- The union must tell the employer the names of those employees who elect to pay all the union dues and those employees who only agree to pay the core union dues. Again, if the union has determined that all union dues are spent on core activities only, the union will need to communicate that fact to the employer so that the employer knows that it does not need to await the receipt of information about the elections of the dues payers regarding non-core activities. If the union dues have no non-core component, there is nothing that the employer has to hold back without a written election in place.

- If part of the union's dues are for non-core activity, once the dues payer's election has been communicated to the employer, if the employee did not agree to pay the non-core portion of the union dues, the employer can no longer deduct the non-core portion of the union dues from the employee and the union can no longer accept the non-core portion of the union dues for that employee from an employer.

- As of August 1, 2022, if there is a non-core portion of union dues and the dues payer does not make an election, the employer cannot deduct from the employee's pay and cannot send to the union the non-core portion of the union dues and the union cannot accept non-core dues unless there has been an election in writing by the dues payer. (sections 26.1 (3) and (7)) The default in the face of no election is that the dues payer has not agreed to pay the non-core portion of their union dues.

- As of August 1, 2022, the union cannot use the portion of union dues that it has determined relate to core activities to pay for the cost of non-core activities.

- The process of unions evaluating and assigning accordingly their upcoming spending of union dues to core and non-core activities and gathering of written elections must occur at least annually. The annual date can be set by the union or negotiated into the collective agreement.

- The Alberta Labour Relations Board can hear and resolve complaints challenging the union's division of activities between core and non-core, the validity of an written election, the sufficiency of the information provided by the union to the dues payers and any other matter arising under s. 26.1.

A few key impacts of this new section and Regulation are:

- The dues payers are required to make a written decision as to whether they will pay the non-core amount of the overall union dues. The dues payers are not able to pick and choose which non-core activities they support. It is an all or nothing decision regarding the non-core amount.

- The restrictions set out in s. 26.1 only apply to union dues (union dues, assessments, and initiation fees). The union can continue to spend other revenue (eg., rental income from renting part of its buildings to a third party, revenue from selling items to members, interest income from investments, etc.) as well as accumulated savings to August 1, 2022 as it determines is appropriate, regardless of whether the activities would be core or non-core. The union is free to develop other new sources of revenue as well.

- If the dues payer elects to not pay the non-core portion of union dues, the union should not receive and cannot accept the non-core portion of that dues payer's union dues. The union does not get the full amount of union dues set by its normal processes under its bylaws, constitution and policies; instead the union only receives the core portion of the full union dues from that dues payer.

- Provided that it has other funds, the union can continue to spend the same amount of money on non-core activities as it planned, regardless of the written elections or the amount of non-core dues that it actually receives. The union could allocate the spending of other revenue or savings to any shortfall in dues revenue to cover non-core activities, or the union could change its planned expenditure on non-core activities or a combination of both. The union cannot use the core activities part of union dues to cover non-core activity costs.

- The union must continue to abide by its own bylaws, constitution, and policies regarding membership approval for its budget and spending. It must continue to abide by any rules of its national or international parent union in making such decisions. The decisions of the individual dues payers regarding their payment of the non-core portion of dues does not change any of those obligations.

- The amount that a union must pay to another union organization, such as its parent union, a labour central, or to its landlord, or other third parties, is not reduced or otherwise impacted by the written elections of the dues payers in the bargaining unit. That is, the cost of being a part of the

national or international parent union like CUPE is not changed by these Alberta laws, the union still owes the full price of membership.

- Section 26.1 does not curtail or necessarily change union spending. Instead, it provides an opportunity for individual members to avoid paying that part of the total union dues that had been approved by the union membership that are to be spent on non-core activities as defined by the government of Alberta.

- While the legislation does not prevent unions from accepting donations from dues payers of additional funds beyond union dues to cover the shortfall in the cost of non-core activities caused by some dues payers opting out of paying those non-core dues, those donations would not receive the same tax treatment that union dues enjoy.

- The Alberta Labour Relations Board has been put in the position, subject to judicial review, of determining complaints about the nature of internal union spending and internal union initiatives. This politicizes the Board in a manner that has never been the case before in Alberta and is not the case in any other province in Canada. It is also important to note that any single individual member's complaint can force the union to justify all of its analysis of its spending in a hearing at the Board.

The Nature of Union Budgeting in Canada

Most trade unions in Alberta and across Canada, are democratic organizations run by officers elected by the membership and staffed by staff hired by the elected officers. Many Canadian and Alberta unions put their bylaws and constitutions on the public spaces of their websites for anyone to review. Members generally have a say in the passing of budgets, consideration of expenses and other financial approvals at local union meetings. Union member generally have the option to go over the union's financial records and books simply by making an appointment. Union bylaws, constitutions and practices require and allow for member oversight on budgets and spending and the amount of union dues set. Many local unions are subject to parent union oversight as well.

All of this to underline that the provisions of the new s. 26.1 are unnecessary to achieve the stated Alberta government purpose of transparency of union operations and member input into the financial decisions of their union. Instead, this new provision and the new Regulation appear to be intended to create dissent in the union ranks by suggesting that some of the spending of unions is inappropriate.

These new laws undermine the democratic, majoritarian principles that unions adopt for their operations. Those principles are consistent with the *Labour Relations Code,* jurisprudence of the Supreme Court of Canada regarding union obligations to members, and the labour laws in other provinces in Canada. This newly legislated level of interference by the Alberta government in internal union affairs is breathtaking.

The Alberta government has stepped into the heart of internal union affairs by defining the nature of union spending, giving union members the ability to opt out of paying some of their union dues while they will still enjoy the benefit of those expenditures and granting powers to the Alberta Labour Relations Board to be ultimate decision maker on any union's determination of how its spending should be characterized. Unions are now held to account to the ALRB at the complaint of a single member.

Suffice it to say, that despite the fact that the Regulation is not quite as bad as we might have been expecting, this initiative is, in my opinion, a violation of the freedom of association of unions and their members as guaranteed by s. 2(d) of the *Charter of Rights and Freedoms.* However, until these laws are repealed or overturned by Charter challenges, the Alberta unions are expected to follow them.

Is it defensible that all union spending is for core activities as defined under s. 26.1 and the regulation?

In my opinion, the ALRB would rule that all or certainly most of the traditional spending of the unions on union activities within Alberta is spent on core activities, provided that the case of the union includes well-presented full legal arguments with detailed supporting evidence. To understand the basis for this opinion, we need to look at the definitions of core and non-core activities and consider the nature of trade union spending.

What are core and non-core activities in these new laws?

Trade unions in Alberta should start their assessment of their spending with the presumption that everything or almost everything that they spend their limited union dues revenue on is a core activity. Union dues amounts and union spending is set and approved by the members who pay the dues, and their ability to pay is limited. The pressure to limit the amount of money paid by members through dues naturally places great pressure on the union to only spend the dues received on activities that the membership feels are of benefit to the membership. The officials of the unions are elected from the membership and also pay dues, which continues this pressure. Officials who do not spend the dues in a manner acceptable to the membership do not continue in office or are subject to oversight by their parent unions.

Of course, if there is a union in Alberta that has used dues money for some non-union or other unrelated purpose such as for personal benefit of only a few members, officials or staff (eg, a holiday trip that has nothing to do with union business) or the like, that kind of spending would not be seen as core activity. However, I am not aware of any unions in Alberta who spend dues in such a manner.

The provisions of the new section 26.1(b) of the Code define **core activities** as

> 26.1(1)(b) the amount or percentage of the union dues, assessments or initiation fees that directly relates to
>
> (i) activities under this Act, including activities relating to collective bargaining and representation of members, and
>
> **(ii) other activities that do not fall under subclause (i) or clause (a), including any activities prescribed by the regulations.**

As a result, activities that do not fall within the definition of "non-core" activities are deemed to be core activities. Another way to understand that is that activities are ***presumed*** to be core unless they fit within the definition of non-core.

Core activities are specifically stated to include any activities under the Labour Relations Code, which covers representation of members, collective bargaining, strikes and lockouts, addressing unfair labour practices, successorship applications, grievances and arbitration, challenges to decisions of the Labour Relations Board and of a grievance arbitrator and any other activity that is part of the Code.

Section 26.1 also gave the government the power to make regulations to further define core and non-core activities. The Regulation does this in section 3, which makes the guiding principle for determination of whether an activity is a core activity is: ***"if the activity directly benefits dues payers in the workplace"***. Section 3(2) states that an activity that does not directly benefit dues payers in the workplace is an activity that is non-core as set out in section 26.1(1)(a)(iv) of the Code.

Section 3(3) of the Regulation states that the prescribed activities referenced in section 26.1(b)(ii) – that is, those other core activates defined by Regulation– are activities that directly benefit dues payers in the workplace, including but not limited to the list of items from a-h of that section (Note that the list sets out examples, other activities can also be core.) The section says:

3(3) An activity that directly benefits dues payers in the workplace is a prescribed activity for the purposes of section 26.1(1)(b)(ii) of the Act and may include the following, if the activity directly benefits dues payers in the workplace:

(a) collectively advancing and advocating for workplace goals, including

(i) creating public awareness, and
(ii) lobbying;

(b) participating in legal proceedings;

(c) complying with obligations under enactments;

(d) supporting or representing dues payers in proceedings, investigations or hearings related to their employment;

(e) educating and training dues payers;

(f) providing benefits, establishing funds and providing money to dues payers in relation to their employment;

(g) negotiating and administering collective agreements to which the trade union is a party;

(h) **engaging in activities that relate to the operation and governance of the trade union, including**

(i) developing and maintaining the trade union's bylaws and constitution,

(ii) administration of the trade union,

(iii) recruiting new members in preparation for certification of the trade union under the Act,

(iv) educating and training the staff of the trade union, and

(v) (v) operating hiring halls and other means of assigning work.

Non-core activities are defined in section 26.1 to be:

> 26.1 (1) (a) the amount or percentage of the union dues, assessments or initiation fees that relates to political activities and other causes, including
>
> (i) general social causes or issues,
>
> (ii) charities or non-governmental organizations,
>
> (iii) organizations or groups affiliated with or supportive of a political party, and
>
> (iv) (iv) any activities prescribed by the regulations,

These non-core activities are broad and ill-defined in this statute. The Regulation has provided some guidance in that section 3(2), as just mentioned, clarifies that an activity that does not directly benefit dues payers in the workplace is a non-core activity as prescribed in s. 26.1(1)(a)(iv).

How will these provisions be interpreted?

The modern approach to statutory interpretation has been considered by courts across Canada, by the Alberta Labour Relations Board and by Arbitrators in Alberta. A statute or Regulation is to be interpreted by looking at the ordinary and plain meaning of the words used in the overall context of the legislative scheme and the factual context within which the legislation is to operate. Further, the *Interpretation Act*, section 10 requires decision makers to give legislation a fair, large and liberal construction and interpretation that best endures its objects.

While some might look at the words "directly benefit dues payers in the workplace" and consider that to mean that the union must be able to show that the specific dues payers in their specific workplace must specifically benefit from the activity before it is core, in my opinion such an interpretation is not supported by the legislation or the regulation. When we look at the legislated examples of activities that are set out as examples of core activities, it is clear that the legislation has much broader interpretation.

First consider an example of a regular activity which is clearly core because it is an activity under the Code and one of the specific examples in the Regulation (s. 3 (3)(g) - the union filing a grievance and proceeding to arbitration. If that grievance is about the union's contention that the collective agreement supports the

promotion of employee A, not the employer's selection of employee B, and the union wins at arbitration, one remedy may be that employee A is promoted and employee B is demoted to their earlier position. Clearly this activity is of no benefit to employee B and instead is a detriment. Holding the employer to the proper interpretation of the collective agreement benefits the entire bargaining unit but for those members who never seek a promotion, they too enjoy no actual personal benefit from interpretation of those rights.

Another example, which occurs on occasion, is a case involving the termination of employee C, who has become so disliked by co-workers due to offensive conduct that they would prefer if employee C is not reinstated. The union has a duty of fair representation under the Code and if there is a reasonable case for reinstatement of employee C through a grievance and arbitration, the union must proceed, even if the rest of the bargaining unit (or some group of the employees) feels that reinstatement of employee C would not be of benefit to them and even would be unbeneficial to them personally. Pursuing the grievance to arbitration will cost the union money for the arbitrator, their lawyer, if any, and for the time of the union representatives working on the file, again which is the opposite of a benefit to the dues payers. In fact, if the union made decisions about grievances based on the personal views and personal benefit of the dues payers in the bargaining unit alone, it would be in breach of its duty under the Code almost every time it did so.

These examples underline that the meaning of "direct benefit" must be far removed from the specific, personal interests of the dues payers. It must focus on the overall administration of the collective agreement and of the union following its legal duties even if they conflict with what some or all of the dues payers would see as a personal benefit.

Moving to examples outside of collective agreement administration, collectively advocating for common workplace goals, including (but not limited to) lobbying and creating public awareness is an example of a core activity in the Regulation. A union may lobby government on an issue spending a great deal of time and money without a single bit of success. In such a case, the activity provided zero direct benefit to any member of the workplace, but the union and its members could not know that result when they decided to engage in the campaign.

Consider an organizing campaign to certify a new bargaining unit in a new workplace, again a very common activity of a union in Alberta. First, the benefit to the dues payers in an existing bargaining unit and workplace that the union represents of adding new bargaining units to their union is always indirect. While an additional bargaining unit will generate more union dues for the local union, it will also generate additional costs which are usually at least proportional to the increase in dues, and in fact generally a new bargaining unit for which often costs more during the bargaining of the first collective agreement. And in the event that

the certification application fails, any possible direct benefit to the existing dues payers is zero.

From these examples, it is clear that the legislation does not require actual direct benefit to the existing dues payers or the existing workplace, but rather allows the union to pursue activities, such as advocacy efforts or organizing efforts aimed at addressing common workplace goals generally, even if there is no guarantee of any or full success and even if any success will not directly benefit specific members of the workplace.

While these new laws have no similar equivalents in Canada to look to for precedents, this approach to understanding the provisions is entirely consistent with the role of trade unions as set out by the Supreme Court of Canada in *Lavigne v. OPSEU [1991] 2 SCR 211*. In that case, Mr. Lavigne was not a union member but was paying union dues as a member of the bargaining unit. He objected to the use of his dues to support causes that came within the broader aims of the union. In denying his position, Justice Wilson said at paras 160 and 163 (Westlaw version):

> (160) … For example, in *Slaight Communications*, supra, Dickson C.J. adopted the expression of Professor David Beatty that "labour is not a commodity" (David M. Beatty, "Labour is not a Commodity", in Barry J. Reiter and John Swan (eds.), Studies in Contract Law (1980)). The idea that is meant to be captured by this expression is, I think, that the interests of workers reach far beyond the adequacy of the financial deal they may be able to strike with their employers. At page 1055 the Chief Justice made it clear that the interests of labour do not end at some artificial boundary between the economic and the political. He expressed the view that "[a] person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being" (quoting from the *Alberta Reference*, at p. 368) and that viewing labour as a commodity is incompatible with that perspective. Unions' decisions to involve themselves in politics by supporting particular causes, candidates or parties, stem from a recognition of the expansive character of the interests of labour and a perception of collective bargaining as a process which is meant to foster more than mere economic gain for workers. From involvement in union locals through to participation in the larger activities of the union movement the current collective bargaining regime enhances not only the economic interests of labour but also the interest of working people in preserving some dignity in their working lives…
>
> (163) Whether collective bargaining is understood as primarily an economic endeavour or as some more expansive enterprise, it is my opinion that union participation in activities and causes beyond the particular workplace does foster collective bargaining. Through such

> participation unions are able to demonstrate to their constituencies that their mandate is to earnestly and sincerely advance the interests of working people, to thereby gain worker support, and to thus enable themselves to bargain on a more equal footing with employers. To my mind, the decision to allow unions to build and develop support is absolutely vital to a successful collective bargaining system.

CUPE National and other National/International Unions

CUPE National is the parent of many local unions in Alberta. The members of those locals decided to be a chartered local of CUPE National, it is not a happenstance. Those local unions would not exist as they are now if they were not part of CUPE and they cannot be a part of CUPE unless they pay the cost that CUPE sets to maintain the relationship. Being a member of a national or international union has significant daily value to all the dues payers in any Alberta bargaining unit. CUPE provides the local with the strength of being part of a largest national union in Canada, as well as administration, national labour representatives, regional representatives, education, strike/lockout support, connection to other CUPE locals both within Alberta and across Canada and host of other benefits. Without being a member of CUPE National, the local unions have no access to any of these resources.

In my opinion, the cost of being a part of a larger organization for an Alberta local union will be interpreted as being no different than paying the rent to the landlord. If the union defaults on its rent, it will no longer have the space necessary for union administration and if the union defaults on its payments to CUPE National it can ultimately lose its charter as a CUPE local. Put another way, existence as a CUPE local is the core activity – it is clearly an administrative activity that goes the very core of that local's existence and identity. The Alberta local is not "buying" education or representation or whatever else from CUPE National with a view that they may buy it from another third party, such as they might shop for a new accountant. In my opinion, there is a very high likelihood that the ALRB will accept this characterization as part of core administration for the use of local CUPE union dues to cover the cost of being a part of CUPE National.

There are also activities on the list in the Regulation that do not involve the union performing activities required by the Code or related to collective bargaining or collective agreement administration. For example, participating in legal proceedings generally, representing employees in matters related to their employment but outside of collective agreement, educating dues payers and union staff, creating benefit funds, operating hiring halls, and advancing and advocating for workplace goals. The fact that many of these activities are not part of usual workplace labour relations again supports a broad and expansive view of the phrase direct benefit to dues payers in the workplace. These activities are the kind

of activities that allow a union to use its expertise, experience and strength to advance the rights of union members legislatively, in other legal forums, and generally, which brings benefit back to the dues payers whose union dues were spent to do so.

In summary, in my opinion, the Labour Relations Board and the Courts on any appeal of the ALRB decisions, are likely to find that the definition of core activities is broad and expansive. A union will need to be able to show that the activity is generally of benefit to the union and its membership as a whole. The possibility of no benefit if an activity is unsuccessful (eg. losing a legal case, lobbying without success, failing to win a certification vote, etc.) will not be a basis to call the activity non-core. In my opinion, activities that advance the strength, the rights and the interests of the union and its membership will be seen to be core.

A word about non-core activities

The Regulation does not add further insight to the non-core definition than what was already set out in the new section 26.1 of the Code, except since it says that activities that provide direct benefits to dues payers in the workplace are core, non-core activities are activities that do not do so. This supports the interpretation that any activity that provides the kind of broad benefits to the union and its members discussed above would not be non-core.

Returning to section 26.1, it lists a few activities as non-core:

> 26.1 (1) (a) the amount or percentage of the union dues, assessments or initiation fees that relates to political activities and other causes, including
>
> > (i) general social causes or issues,
> > (ii) charities or non-governmental organizations,
> > (iii) organizations or groups affiliated with or supportive of a political party, and
> > (iv) any activities prescribed by the regulations,

We see that non-core activities are spending that relates to “political activities or other causes” and then there are three things included in a non-exhaustive list. One group of things is union engaging in activities that relate to general social causes or issues or charitable or non-governmental organizations (I will refer to this group generally as “charities”).

On first blush, since the legislation says charities are non-core there is no possibility of them being core. However, in my opinion that is not a correct approach. Charities are included in a list of “political activities and other causes”. This suggests that if the charity that the union wanted to support had a direct benefit to

the dues payers in the workplace, expansively interpreted, then it would not be a political and other cause.

For example, supporting the post-secondary campus food bank where students, members, their families and their neighbours may seek support, say while on layoff during a pandemic, does, in my view, provide a direct benefit to the dues payers in that post-secondary workplace. Supporting international labour initiatives that lead or can lead to the development and refinement of International Treaties and Conventions that will be relied upon by the Supreme Court of Canada and all courts and tribunals below them when determining the scope of the constitutional or other rights of unions in Canada is of direct benefit to dues payers in the workplace. Similar arguments can be made for many similar charities that unions support.

The third item in section 26.1(a) is political activities or other causes, including organizations affiliated with or supportive of a political party. This particular item is extremely difficult to interpret in that it appears to suggest that it is not a core activity of a union to engage in the political arena in Alberta, and in my view, this is more evidence of why these provisions violate the Charter. Advocating for workplace goals, at least for the most part, necessarily involves political debate. The limitation is quite narrow, it includes political activities not about other activities of such organizations or groups. While it is difficult to predict how the words “affiliated with” or “supportive of a political party” will be interpreted, in my view, affiliated or supportive must mean a real factual organizational connection, rather than having like views to the political party.

When considering these non-core examples, we must consider the Regulation sections 3(4) and 3(5), which state:

> (4) Where an activity can be considered both a core activity and a non-core activity, the determination as to whether the activity is a core activity or non-core activity must be based on the predominant purpose of the activity.
>
> (5) Notwithstanding subsection (3) and section 26.1(1) of the Act, where a trade union pays union dues, assessments or initiation fees with respect to an activity to another party, including a parent trade union or trade union organization, that activity will be considered a core activity only if the trade union is able to demonstrate that the union dues, assessments or initiation fees have been or will be used by the other party for a core activity.

The Regulations.3(4) allows for an activity to have both core and non-core components and if that is the case, to be a core activity, the “predominant purpose” must be core. This section supports the interpretations set out above

regarding the non-core list set out in s. 26.1(1)(a) in that even if part of the activity may be seen as political and within the listed items, if the predominant purpose is a core activity, the smaller part that is political will not be relevant or make the activity non-core. When considering participation of unions in labour centrals, for example, the fact that a small part of the work of that group is political should not stop the involvement in that group from being core activity.

Section 3(5) allows a union to pay union dues to a third party for core activities provided the third party uses the money for a core activity. A union might own a building and use that space to meet and engage in union administration. Alternatively, rather than using its own space, a union may rent an office space for the same activities and pay the rent to the landlord with union dues. Since the union does not own the building, it pays a third party for the use of the building, which is what the language of s. 3(5) is concerned with.

So, do we have to ask if the landlord uses all of the rent money for only the core activity of providing the space to the union or is the landlord entitled to allocate some of the rent money to profit and use it as it sees fit? Of course, it is irrelevant how the landlord uses the rent it receives. There is no reason that analysis should change if the landlord was a union organization renting a portion of its building to another union. Similarly, it does not matter how the union's lawyer, accountant, coffee supplier, photocopier company, graphic designer, company providing a labour arbitration conference, etc, that it contracts with uses the money paid for that service. The assumption is that third parties set the cost of their products and services to include some level of profit and they use any profits as they wish. The issue is that the union paid that third party for a core activity and the union received the core activity from the third party.

In my opinion, as alluded to earlier, there is a significant difference between the relationship of a CUPE local union with CUPE National and a local union with other third parties which are union organizations or union partners. Again, in my opinion, payments from union dues to cover the cost of the local union's existence as a CUPE local are payments to union administration which are core activities. While it might look like section 3(5) of the Regulation comes into play, that would involve a significant misunderstanding of the relationship that a local union has with CUPE National. Payments of the cost of maintaining the local charter as a CUPE Local are very much like paying the rent on office space and go to administration. The payments to a national parent union are not optional and there is no alternative vendor of that activity, and the local union cannot do the activity inhouse – it has to pay its parent union or its local charter will be revoked.

Looking again at the education example, the payment to a parent union is not similar to the choice a local union might make between putting on its own in-house education for members or paying the cost of members to attend a Lancaster House

conference, which is, in my opinion the focus of the kind of choice section 3(5) of the Regulation is aimed at.

Furthermore, the fact is that CUPE National, like many other parent unions, is not based in Alberta and holds no bargaining rights of its own under the Alberta provincial labour laws. The jurisdiction and reach of the Alberta government into the details of how CUPE National may use the money it receives from local unions to maintain their local charter remains a significant question, and in my opinion, raises significant legal questions which may well provide another basis to render s. 26.1 and the Regulation unconstitutional.

Conclusion

In my opinion, it is very likely that the ALRB would confirm the position that payments by local unions to CUPE National to maintain their existence as a CUPE local union is an expenditure by the local union for administration and that such activity falls within core activities. Once that position is accepted, the way that CUPE National uses the money received from local unions is not relevant.

These new laws are surprisingly complex to understand once one begins to delve into them. It is very important to consider them in their entirety, in the context of the entire *Labour Relations Code* and the other related statutes mentioned in the provisions and also in the context of how unions operate and spend union dues in Alberta. Despite the length of this analysis additional questions will arise and I am happy to address them as well.

Yours truly,

Leanne Chahley

Leanne M. Chahley