



## **Canada (Case No. 2324)**

**The National Union of Public and General Employees (NUPGE), on behalf of the BC Government and Services Employees' Union (BCGEU) and the Health Sciences Association of British Columbia (HSABC) supported by the Canadian Labour Congress (CLC) and Public Services International**

**06-Feb-04**

*The complainant organization alleges that the Government of British Columbia has adopted a law (Bill 94) which nullifies any clauses of collective agreements in the health sector that restrict or regulate the employer's ability to contract out. The complainant also criticizes the adoption of a law (Bill 18) which allows private contractors to override contracting-out provisions contained in existing collective agreements, and of a back-to-work legislation (Bill 95) putting an end to a legal strike of its members in the newly privatized BC Ferry Corporation*

**Report No. 336**  
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**Report in which the Committee requests to be kept informed of  
developments**

## **Introduction**

Allegations: The complainant organization alleges that the Government of British Columbia has adopted a law (Bill 94) which nullifies any clauses of collective agreements in the health sector that restrict or regulate the employer's ability to contract out. The complainant also criticizes the adoption of a law (Bill 18) which allows private contractors to override contracting-out provisions contained in existing collective agreements, and of a back-to-work legislation (Bill 95) putting an end to a legal strike of its members in the newly privatized BC Ferry Corporation

233. The complaint is contained in a communication dated 6 February 2004 from the National Union of Public and General Employees (NUPGE), on behalf of the British Columbia Government and Services Employees' Union (BCGEU) and the Health Sciences Association of British Columbia (HSABC). The Canadian Labour Congress (CLC) and Public Services International (PSI) supported the complaint in communications dated 11 and 16 February 2004, respectively.

234. The Government of Canada transmitted the reply of the Government of British Columbia in a communication dated 16 September 2004.

235. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

## **Background**

### **A. The complainant's allegations**

236. In its communication of 6 February 2004, the National Union of Public and General Employees (NUPGE) states that it represents 337,000 members across Canada, and is an affiliate of the Canadian Labour Congress and Public Services International. This complaint concerns two distinct sets of legislation:

- the first one is Bill 94, enacted as the Health Sector Partnerships Agreement Act, S.B.C. 2003, c.93, and is submitted on behalf of the BCGEU and the HSABC;
- the second one deals with Bill 18, enacted as the Coastal Ferry Act, S.B.C. 2003, c.14; and Bill 95, enacted as the Railway and Ferries Bargaining Assistance Act, S.B.C. 2003, c.99, submitted on behalf of the 4,300 members of the BC Ferry and Marine Workers' Union, an affiliate of the BCGEU.

237. Pointing out that this is the fourth complaint against the current Government of British Columbia in just over two years, the complainant organization emphasizes that the Freedom of Association Committee ruled that the six pieces of legislation at issue in Case No. 2180 violated Convention No. 87; the Committee requested the Government to repeal one of these Acts and to amend the five other ones, and called upon the Government to refrain from taking such action in the future and to restore appropriate and meaningful collective bargaining with public sector employees. The Government's attitude was, at best, dismissive towards the ILO and basic freedom of association principles. Despite claims that the Government was initiating discussions with social partners to bring about improvement and change, the reality is that it is continuing its legislative attacks on BC workers and their unions. The confidence of unionized employees in both private and public sectors continues to be undermined by recent legislative interferences. The Government has an increasingly poor record of violating workers' rights through an abuse of its legislative powers.

*The Health Sector Partnerships Agreement Act (Bill 94)*

238. According to NUPGE, the legislation challenged here provides employers with the unilateral right to eliminate provisions in freely negotiated collective agreements, which provide substantial protection for workers; employers are given the right to avoid the terms of binding collective agreements by contracting out to related employers that are not covered by such agreements.

239. The Act applies where a public sector employer enters into an agreement with a private sector contractor to provide capital for construction, renovations or equipment in a health-care facility, or to provide non-clinical services in such facility. The Act voids key provisions of collective agreements that prevent contracting out of work, and prevents workers and their unions from accessing important statutory rights under provincial labour relations legislation. This is the second phase of the Government's attempt to interfere with the freedom of association of workers in the health sector; the first one was Bill 29, the Health and Social Services Delivery Improvement Act, which interfered with the rights of direct employees of health sector employers and led to massive contracting out of work and lay-off of employees in that sector (Bill 29 was the subject of complaint No. 2180 to the Freedom of Association Committee). The Act deals

with employees of contractors and is meant to restrict their ability to form unions and to improve their terms and conditions of employment.

240. Sections 4 and 5 of the Act nullify any clause in collective agreements that “restricts, limits or regulates the employer’s ability to contract out outside of the collective agreement for the provision of non-clinical services”. Where work is contracted out, the contractor’s collective agreement cannot contain provisions that limit its ability to contract out the work itself. For example, a health sector employer can now contract out food services to a contractor, who can then contract some or all of the work to a low-wage, non-union employer; if that contractor is unionized, there can be no restrictions on its ability to contract out work. This is therefore a clear attack on workers’ freedom of association, since the employer can always respond to a union attempt to improve terms and conditions of employment by simply contracting out the work.

241. In addition, section 3 of the Act overrides section 38 of the Labour Relations Code which provides for “common employer designation” by empowering the Labour Relations Board to treat two employers as one if they carry on activities and have common control and direction; the purpose of that provision is to prevent a unionized employer from simply setting up a non-union operation to avoid a collective agreement, by allowing the Labour Relations Board to declare that the collective agreement applies to the non-union operation. Section 3 of the Act eliminates this protection by providing that section 38 of the Code does not apply to a contractor with a health sector employer. Thus, if a unionized contractor contracted with a health sector employer to provide cleaning services, that contractor could set up a second non-union company; under the previous regime, the union could apply to the Labour Relations Board to have them declared as common employers. The Act now prevents such an application. It is a clear attempt to prevent unionization and interfere with workers’ right freely to associate.

242. Furthermore, under section 35 of the Labour Relations Code, if a business is sold or transferred, the union certification and collective agreement apply to the new owner. The Act now provides that if a contractor sells the business, the union cannot use the successorship provisions of the Code. Again, this is a clear attempt at limiting the workers’ ability freely to associate.

243. Since Canadian jurisprudence has established criteria for determining who is the true employer of employees, it is not unusual for an employer whose workers are unionized to claim that it does not have to pay a worker according to the collective agreement because that worker is allegedly a contractor rather than an employee; to prevent this, under Canadian case law, unions could challenge such a claim by establishing such factors as who gives directions to, and controls, that employee. Section 6(3)(b) of Bill 29 (see above) attempted to limit the application of the jurisprudence in this area. Sections 4 and 5 of the Act take it one step further by requiring that it should be demonstrated that an

employer has the subjective intent to have the employee fully integrated within the operations and working under the employer's direct control and supervision. Therefore, even if a union can establish all the objective criteria proving that a person is an employee of the employer, its application could be defeated if it does not establish the employer's intent that this person would be an employee.

244. The complainant organization concludes that the Act is a direct attack on the freedom of association of workers in the health sector. It is meant to keep that sector low wage and to interfere with the workers' ability to form unions: if a business is sold, the union has to re-unionize the workplace; if a union is formed, an employer can simply contract out the work, even if the collective agreement prohibits contracting out; an employer can simply set up a non-union company to do the work, and the union will have to re-unionize the employer; or an employer can simply continue to contract out and continue to set up non-union companies, in response to efforts to unionize and improve terms and conditions of employment.

245. When examining Case No. 2180, which dealt with Bill 29, the Freedom of Association Committee noted that that Bill "... introduced major changes to the existing system of labour relations in the health and social sectors, which affected previously negotiated collective agreement provisions and will have a lasting effect on the collective-bargaining regime of employees in these sectors"; and it made a number of recommendations that the Government should follow in this respect [330th Report, para. 305]. Only ten months later, the Government passed Bill 94 which, to all intents and purposes, is an extension of Bill 29, and chose to ignore completely the Committee's recommendations. As was the case with all labour relations legislation introduced by the current Government in the last two-and-a-half years, there were absolutely no consultations with any of the unions representing workers affected by the legislation prior to its introduction.

#### *The Coastal Ferry Act (Bill 18)*

246. Prior to the adoption of the Coastal Ferry Act, ferry services in British Columbia were the sole responsibility of the Provincial Government. NUPGE alleges that the Act, adopted in March 2003 to facilitate the creation of a privately owned company, the BC Ferry Corporation (the Corporation), threatens the job security of the 4,300 members of the BC Ferry and Marine Workers' Union (BCFMWU).

247. Again, the workers affected by the Act and their unions were not consulted prior to the introduction or adoption of the legislation. One of the obvious reasons for that lack of consultation is that the Act is designed as an additional means in the de-unionization of the provincial ferry system. The workers concerned have been opposed to that legislation since it was introduced, not only by reason of its restrictive and anti-union bias, but also because they

consider it is bad public policy, with profit-making being the dominating factor, at the expense of safety, reliability and affordability of ferry services.

248. Section 25 gives precedence to the Act over the Labour Relations Code. This basically nulls and voids all freedom of association principles and protections established in the Code, which provides that powers and duties under the Code must be exercised in a manner that: recognizes the rights and obligations of employers, employees and trade unions; encourages the practice and procedures of collective bargaining; encourages cooperative participation between employers and trade unions; promotes conditions favourable to the orderly and expeditious settlement of disputes; minimizes the effects of labour disputes on persons not involved in these disputes; ensures that the public interest is protected during labour disputes; and encourages mediation as a dispute resolution mechanism. By placing this particular legislation above these principles, this puts the Act and the Ferries Commissioner (the official in charge of the regulation of ferry operators, under Part 4 of the Act) beyond the reach of the provincial Labour Code, and ensures that the Government and the new private Corporation are not constrained by collective bargaining obligations in furthering the Government's privatization agenda.

249. The most offensive part of the legislation is section 26, which provides that the Act prevails over freely negotiated agreements, as follows: "A collective agreement that conflicts or is inconsistent with this Act is void to the extent of conflict or inconsistency ... If a provision of a collective agreement requires the BC Ferry Corporation to negotiate with a trade union to replace provisions of the agreement that are null and void as a result of this legislation, that provision is deemed not to apply in respect of this Act." This clause allows the Government to cancel any negotiated term of an agreement that is inconsistent with the application of the Act. For example, it has been used to reduce from two to one the number of directors representing the union on the Board of Directors of the Corporation. Such unilateral legislative action, that has become the common practice of the current Government, demonstrates its continued disregard for basic principles of freedom of association.

250. The Act further threatens the employment security of workers of the Corporation by establishing contracting out as the preferred method of service delivery within ferry services. While section 38(1) of the Act states that: "Ferry operators are to be encouraged to seek additional or alternative service providers on designated ferry routes through fair and open competitive processes", section 69 actually compels them to do it on an "ongoing basis". This is completed by section 40, which mandates ferry operators to provide the Ferries Commissioner with a record of their attempts to subcontract service delivery, such as requests for proposals, responses to these proposals, unsolicited proposals, etc.

251. The cumulative effect of these provisions is to threaten severely the union security of workers of the ferry system; it denies them basic rights as

workers and seriously undermines the rights and protections deriving from Convention No. 87 and freedom of association principles.

*The Railway and Ferries Bargaining Assistance Act (Bill 95)*

252. The Railway and Ferries Bargaining Assistance Act is clear evidence in support of the preceding allegations. This Act, introduced and proclaimed on 9 December 2003 in the context of a round of collective bargaining between the newly privatized BC Ferry Services Inc. and BCFMWU, is essentially a strike-breaking legislation that the Government tried to use to end a strike that had begun less than 48 hours prior to the introduction of the Act.

253. In early September 2003, BCFMWU began its first collective-bargaining round with the newly privatized company. The parties exchanged bargaining proposals in mid-September. After several weeks of negotiations where the employer refused to make concessions, the union held a strike vote which gave it a 97 per cent strike mandate from the 82 per cent participating members. On 3 November, BCFMWU returned to the bargaining table where the employer continued to demand concessions even after the two days of mediation (3 and 4 December) that it had requested. On 5 December, BCFMWU gave the 72 hours' strike notice required by law, stating that it would go on strike at 5 a.m. on 8 December; the union also agreed to suspend strike action between 19 and 29 December so as not to inconvenience the travelling public during the holiday season.

254. Negotiations to establish an essential service level broke down over the next few days as the union continually faced opposition from the company over the staffing of scheduled sailings. By the time the strike had started, Labour Relations Board hearings had facilitated a compromise on essential services crewing. On 7 December, only hours after the beginning of the strike, the union agreed to the mediator's request to return to the bargaining table and, in a show of good faith, agreed to ease back on strike activity by providing more workers than called for in the Essential Services Order.

255. Unknown to the union at that time, Bill 95 was already in process (it is in fact an updated version of an Act dating back to 1976). It was introduced and proclaimed on 9 December as the Railway and Ferries Bargaining Assistance Act, 2003, to turn the legal strike into an illegal one, and put an end to it. Under the Act, the Labour Minister was empowered to call for an 80-day cooling-off period, which would effectively render the strike illegal. The Act contains absolutely no measures to provide impartial procedures such as arbitration to settle the dispute. Instead, the Government's interference complicated the negotiations by not allowing the strike to continue; it removed all incentives for the company to settle and allowed it to resist union demands, with no pressure to bargain in good faith.

256. The Act, along with the additional severe restrictions placed on the bargaining rights of BCFMWU members by the Coastal Ferry Act (described above), would have made it next to impossible to negotiate a free and fair collective agreement. In these circumstances, BCFMWU and its members decided to remain firm and continue their strike until they had achieved a tentative collective agreement. On 12 December, realizing that the parties' positions were far apart, the mediator declared bargaining at an impasse; he proposed that the parties accept binding arbitration and that he be appointed special interest arbitrator to settle outstanding issues, which both parties accepted. The union agreed to have its members return to work by 10 a.m. that day, and the employer agreed not to discipline any union member for any strike activity, legal or illegal.

257. The complainant organization states that it is proud to have been able to achieve a freely negotiated settlement through agreed binding arbitration, but emphasizes that it was not facilitated in any way by the adoption of strike-breaking legislation. The legislative interference in the collective-bargaining process was solely designed to restrict workers' rights and tilt the bargaining process in favour of the employer. BCFMWU members were able to achieve a voluntary negotiated collective agreement, albeit with the threat of legal sanctions hanging over their heads. The Act was nevertheless proclaimed and is still in force.

#### Conclusions sought

258. Recalling that Canada ratified Convention No. 87 in 1972, after securing approval from all provincial governments, including British Columbia, the complainant organization states that in its 28-year history, there has never been a government that has so consistently violated the rights of thousands of workers, neither has there been a government in Canada that has been the subject of so many ILO complaints, than the current Provincial Government of British Columbia. No provincial government has ever shown such contempt for the ILO and the basic principles on which it was founded. At the same time the Governing Body was ruling on the previous complaints concerning British Columbia, the Government was introducing legislation (Bill 18) that was in direct contradiction with the recommendations contained in the 330th Report of the Freedom of Association. The Prime Minister of the Province was quoted on 28 March as saying he had no intentions of making such changes to comply with the ILO ruling: "I feel no pressure whatsoever ... I was not participating in any discussion with the UN." Experience has shown repeatedly that this Government does not believe in free collective bargaining and is prepared to legislate a contract if it cannot obtain what it wants at the bargaining table. It is obvious that this Government has no understanding of, and no respect for, basic principles of freedom of association and its international obligations as signatory to ILO Conventions.

## B. The Government's reply

259. In its communication of 9 September 2004, the Government states that none of the Acts complained of infringe on the substantive provisions of Convention No. 87, since they do not restrict workers' rights to establish organizations of their own choosing, to draw up their constitutions and rules, elect their representatives, organize their administration and formulate their programmes. The Government states that it continues to support the collective-bargaining process in the Province, as evidenced by the 53 collective agreements negotiated since January 2002 in the public sector, and the substantial reduction of labour disputes: prior to the election of the current Government, there were 80 strikes in 2000; 18 in 2002; and only eight in 2003.

### *The Health Sector Partnerships Agreement Act (Bill 94)*

260. The budget for health services in British Columbia grew from \$8.4 billion in 2000-01 to \$9.5 billion in 2001-02, and \$10.4 billion in 2002-03. The 2003-04 budget has increased health spending to \$10.5 billion, and the estimated cost of health services will rise to \$11.3 billion by 2006-07. The Act is a response to the pressing need to reduce the rising cost of health care. Public-private partnerships designated under the Act are a cost-effective way to increase capacity in the health-care system.

261. Under the Act, a private sector partner who makes a capital investment in a new or upgraded health facility and negotiates an agreement with the Province to provide non-clinical services, will have the same flexibility as health authorities in managing its workforce through contracts to deliver non-clinical services. The Act will assist in the development of new health-care facilities by clarifying the rules for public-private partnerships in the health sector.

262. The Act prevents a private sector partner, a contractor and a subcontractor from being declared "common employers" under section 38 of the Labour Relations Code ("the Code"). Where a unionized private sector partner contracts with a non-unionized contractor for the provision of services, a common employer declaration would impose a collective agreement upon the latter's employees without providing them with an opportunity to indicate whether they wish to be represented. Unions would naturally prefer that section 38 apply in such circumstances as it results in the unionization of a group of employees without the usual costs and efforts. Exempting the parties from the application of section 38 of the Code allows them to make their own decision regarding the bargaining agent, if any, that they wish to have represent them.

263. The Government admits that the Act does void any provision of a collective agreement that restricts, limits or regulates the right of private sector contractors to contract outside the collective agreement for the provision of non-clinical services, but argues that this restriction on the scope of bargaining is

necessary to give private sector partners and contractors the discretion to decide on the most efficient and cost-effective manner of providing non-clinical services. The Government concludes that these restrictions on the scope of bargaining do not contravene Convention No. 87 since they do not restrict workers' rights to establish organizations of their own choosing, to draw up their own constitutions and rules, elect their representatives, organize their administration and formulate their programmes.

264. The purpose of the Act is to create a framework for viable partnerships in the health sector. Unless the parties intend that an employee be fully integrated with the operations and working under the direct supervision and control of another employer, that employee cannot be considered to be employed by another employer. This clarification is necessary due to the frequently close working conditions: for example, medical staff in an operating room may request cleaning staff to have the operating room cleaned up between surgeries, but there is no intent for the medical staff to supervise or control the cleaning staff.

265. The successorship provisions in the Code are designed to preserve the rights of employees and unions when there is a disposition of business; they require a discernible continuity in the business, rather than in the work performed. In a genuine subcontracting or loss of business to a competitor, the work is performed by a new business, rather than being a continuation of the pre-existing business: as a result, under existing law in British Columbia, successor rights are not available in cases of subcontracting or loss of business to a competitor. The successorship provisions in the Act clarify the application of the existing law, rather than making substantive changes to the existing laws on successorship. An exemption from successorship provisions does not preclude the affected group of employees from requesting certification and negotiating their own collective agreement. The Government concludes that the successorship provisions in the Act do not infringe on the substantive provisions of Convention No. 87 since they do not restrict workers' rights to establish organizations of their own choosing, to draw up their constitutions and rules, elect their representatives, organize their administration and formulate their programmes.

#### *The Coastal Ferry Act (Bill 18)*

266. The Government states that, over the next two years, \$2 billion will be required to replace ageing ships and upgrade terminals in the BC Ferries system; accessing outside capital to finance these improvements will reduce the risk to taxpayers of higher government debt. The Act transformed British Columbia Ferry Services Inc., a taxpayer-supported Crown Corporation, into an independent, regulated company. To protect consumers and the public, the Act established an independent regulator to ensure that services are provided and that rate changes are reasonable. This regulated framework also provides incentives for the company to be efficient and innovative, and encourages

services that compete with it. The Act deems the employees of the previous Crown Corporation to be employees of the new company; it also creates a maintenance subsidiary of the new company and designates some employees of the previous Crown Corporation to be employees of the new maintenance subsidiary. The Act clarifies that the new company and the maintenance subsidiary are separate employers.

267. The allegation that the new company is not constrained by the obligations of collective bargaining is incorrect. The new company and its employees remain subject to the Code. In order to provide good value to the public, ferry operators are encouraged to seek additional or alternative service providers through fair and open competitive processes, but these parties would be required to provide services in accordance with the Code; in particular, the Act does not contain any restriction on successorship, union representation or bargaining.

268. Section 25(1) of the Act provides that “in the event of conflict between this Act and the Labour Relations Code, this Act prevails”. This is conventional language used to assist in the interpretation of the legislation. That provision does not result in a general abrogation of the rights provided under the Code. In fact, it has no effect unless there is a conflict between the Act and the Code; and, as there is no conflict between these two pieces of legislation in respect of the substantive rights provided by the Code as regards successorship, union representation and bargaining, these rights are unaffected. The complainant’s assertion that this provision “basically nulls and voids all freedom of association principles and protections established in the Code” is completely without foundation.

269. The Government concludes that the Act does not infringe on the substantive provisions of Convention No. 87 since it does not restrict workers’ rights to establish organizations of their own choosing, to draw up their constitutions and rules, elect their representatives, organize their administration and formulate their programmes.

*The Railway and Ferries Bargaining Assistance Act (Bill 95)*

270. This Act allows the Government to impose a cooling-off period not exceeding 90 days if a disruption of railway or ferry services threatens the economy or welfare of the Province or its citizens. It does not provide the authority to impose the terms of a collective agreement but merely creates a process for the parties to continue bargaining. It amends a 1976 Act, to update references to the parties and to related legislation.

271. In the most recent round of bargaining, the parties commenced contract negotiations on 8 September 2003. By early December, the talks had broken off and hostility was developing. Pursuant to the Act, the Government ordered an 80-day cooling-off period and appointed a special mediator to work with the

parties. The Act requires the resumption of normal operations during the cooling-off period. The assertion that the Act “contains absolutely no measures to provide impartial procedures such as arbitration to settle the dispute” is incorrect. The Act requires that upon declaring a cooling-off period, a special mediator must be appointed to assist the parties in settling the terms of a collective agreement.

272. As regards NUPGE’s statement that it is proud that BCFMWU and BC Ferry Services Inc. were able to achieve a voluntary negotiated collective agreement, and while it is true that the parties agreed to binding arbitration, the Government points out that they have not yet completed negotiations for a new collective agreement. In fact, more than six months after the enactment of Bill 95, there are still 150 unresolved bargaining issues. In view of the complexity and intractability of issues to be negotiated, the imposition of an 80-day cooling-off period was a very reasonable intervention in the dispute. The Act is even handed legislation that is intended to facilitate a resolution of bargaining disputes that have reached an impasse, in railways or ferries services; it permits only a temporary suspension of the right to strike.

273. The Government concludes that the Act does not infringe on the substantive provisions of Convention No. 87 since it does not restrict workers’ rights to establish organizations of their own choosing, to draw up their own constitutions and rules, elect their representatives, organize their administration and formulate their programmes.

## **Conclusions**

The Committee’s conclusions

274. The Committee notes that this complaint concerns three Acts adopted by the Government of British Columbia in connection with labour relations in two sectors, namely: (a) in health and social services, Bill 94, enacted as the Health Sector Partnerships Agreement Act, S.B.C. 2003, c.93; and (b) in ferry services, Bill 18, enacted as the Coastal Ferry Act, S.B.C. 2003, c.14, and Bill 95, enacted as the Railway and Ferries Bargaining Assistance Act, S.B.C. 2003, c.99.

### *The Health Sector Partnerships Agreement Act (Bill 94)*

275. The Committee notes that the complainant organization alleges that the Act: violates the rights of freedom of association of employees providing non-clinical services in the health sector; suppresses for these workers some of the protections provided by the Labour Relations Code (in particular successorship provisions) and by national jurisprudence (e.g. the notion of employee); takes precedence over the terms of existing collective agreements; and was adopted without any consultation of affected workers and their unions. The Government replies that the Act does not violate the rights of workers under Convention No.

87, that it is a response to the need to reduce rising health-care costs, that public-private partnerships designated under the Act are a cost-effective way to increase capacity in the health-care system, and that the Act creates a framework for viable partnerships in the health sector.

276. The Committee firstly points out that the allegations concerning this Act cannot be considered in isolation from its previous conclusions and recommendations on a related piece of legislation in the same sector, namely the Health and Social Services Delivery Improvement Act (Bill 29). The Committee had noted in that respect that Bill 29 introduced major changes to the existing system of labour relations in the health and social sectors, which affected previously negotiated collective agreement provisions and would have a lasting effect on the collective-bargaining regime of employees in these sectors. The Committee therefore recommended that full and detailed consultations be held with representative organizations, under the auspices of a neutral and independent facilitator, to review the collective-bargaining issues raised in connection with Bill 29 [see 330th Report, Case No. 2180, para. 305(b)(iii)]. The Committee also requested the Government to ensure in future that appropriate and meaningful consultations be held with representative organizations when workers' rights of freedom of association and collective bargaining may be affected [see 330th Report, para. 305(d)], which was not done here.

277. The Committee notes that the Health Sector Partnerships Agreement Act is essentially legislation that gives employers in this sector more flexibility to contract with private sector partners for the provision of non-clinical services. The explanatory note of the Bill mentions that it is meant to "facilitate development and implementation of public-private partnerships in the health sector, enabling improved delivery of cost-effective non-clinical services to the public". To achieve this objective, article 6(1) of the Act provides inter alia that "A collective agreement that conflicts or is inconsistent with this Act is void to the extent of the conflict or inconsistency" and article 6(2) prevents any third-party intervention ("labour relations board, arbitrator or any person") in this respect. Therefore, protections that might have been negotiated in previous collective agreements on contracting out and subcontracting, or legal and case-law protections that might have existed in this respect (including successorship and "common employer" provisions in the Code) are severely restricted, if not cancelled.

278. The Committee recalls that a legal provision that allows the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to the principles of collective bargaining [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 848]. The Committee also recalls that while a contraction of the public sector and/or greater employment flexibility (for example in the present case, through increased recourse to subcontracting) do not in themselves constitute violations of freedom of association, there is no doubt that these changes have significant consequences in the social and trade union spheres,

particularly in view of the increased job insecurity to which they can give rise; workers' organizations should therefore be consulted as to the scope and form of the measures adopted by the authorities [see Digest, op. cit., para. 934]. The Committee emphasizes once again, as it did in Case No. 2180, the importance of consultations in such cases, where previously negotiated protections are taken away through legislation. Such a unilateral action by the authorities cannot but introduce uncertainty in labour relations that, in the long term, can only be prejudicial.

279. The Committee therefore requests once again the Government to abstain in future from cancelling through legislation existing provisions in negotiated collective agreements, and to undertake meaningful and adequate consultations when preparing and adopting legislation affecting the rights of workers.

*The Coastal Ferry Act (Bill 18)*

280. Noting that this legislation was passed to privatize ferry services, the Committee recalls that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination and interference against trade unions [see Digest, op. cit., para. 935]. Noting that section 26 of the Act does provide that "A collective agreement that conflicts or is inconsistent with this Act is void to the extent of the conflict or inconsistency", the Committee reiterates the principle mentioned above in connection with Bill 94, i.e. that a legal provision which allows the employer to modify unilaterally the content of signed collective agreements, or to require that they be renegotiated, is contrary to the principles of collective bargaining. Stressing the importance of consultations in such cases, the Committee requests once again the Government to refrain in future from cancelling through legislation existing provisions in negotiated collective agreements, and to undertake meaningful and adequate consultations when preparing and adopting legislation affecting the rights of workers.

*The Railway and Ferries Bargaining Assistance Act (Bill 95)*

281. The Committee notes that this legislation (an updated version of the Railway and Ferries Bargaining Assistance Act, 1976, c.48) was passed in the context of a legal strike launched by the BC Ferry and Marine Workers' Union (BCFMWU) during their first round of negotiations with the newly privatized BC Ferry Services. The Act, which made the strike illegal and imposed a return to work, was adopted a mere 48 hours after the beginning of the strike, while the parties were still negotiating and the union had already agreed to a suspension of strike action between 19 and 29 December so as not to inconvenience the public during the holiday season.

282. The Committee recalls that the right to strike is a fundamental right of workers and of their organizations as a means of defending their economic interests [see Digest, op. cit., para. 473] and that ferry services do not constitute essential services in the strict sense of the term. However, in view of the difficulties and inconveniences that the population living on islands along the coast could be subjected to following a stoppage in ferry services, an agreement may be concluded on minimum services to be maintained in the event of a strike [see Digest, op. cit., para. 563]. This is particularly so in view of the circumstances at hand as described by the complainant: a legal strike that had barely lasted 48 hours; a partial suspension of the strike by the union; and negotiations under way. The Committee concludes that the Government's intervention in such circumstances constituted a violation of freedom of association principles. The Committee considers that it would be more conducive to a harmonious industrial relations climate if the Government would establish a voluntary and effective mechanism which could avoid and resolve labour disputes to the satisfaction of all parties concerned; if, despite the existence of such a mechanism, the workers decide to take industrial action, a minimum service could be maintained with the agreement of the parties concerned. The Committee therefore urges the Government to consider establishing a voluntary and effective mechanism for the prevention and resolution of disputes, including the provision of voluntarily agreed minimum services, rather than having recourse to back-to-work legislation. The Committee requests to be kept informed of developments in this respect.

283. In view of the number and nature of complaints against British Columbia it has had to deal with in the recent past, the Committee feels bound to note that two of the three Acts complained of in the present case (Bills 94 and 18) and for which there should have been meaningful consultations, were adopted at the very moment, or shortly after, the Committee had pointed out that repeated recourse to legislative restrictions on collective bargaining can only, in the long term, prejudice and destabilize the labour relations climate if the legislator frequently intervenes to suspend or terminate the exercise of rights recognized for unions and their members. Moreover, this may have a detrimental effect on workers' interests in unionization, since members and potential members could consider useless joining an organization the main objective of which is to represent its members in collective bargaining, if the results of such bargaining are constantly cancelled by law [see 330th Report, para. 304; see also Digest, op. cit., para. 875]. Deploring that the Government, in a very short period of time, reiterated such a stance, which is not conducive to harmonious labour relations and does not promote collective bargaining, and recalling the importance that should be attached to full and frank consultations on matters of mutual interest between public authorities and representative workers' organizations [see Digest, op. cit., paras. 926-927], the Committee requests once again the Government to conduct in future full and frank consultations with representative organizations in those instances where workers' rights of freedom of association and collective bargaining may be affected.

## Recommendations

The Committee's recommendations

284. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Noting that the adoption of the Railway and Ferries Bargaining Assistance Act constituted a violation of freedom of association principles, the Committee requests the Government to consider establishing a voluntary and effective mechanism for the prevention and resolution of disputes, including the provision of voluntarily agreed minimum services, rather than having recourse to back-to-work legislation. The Committee requests to be kept informed of developments in this respect.

(b) Noting that the adoption of the Health Sector Partnerships Agreement Act and of the Coastal Ferry Act violated freedom of association principles in as much as these cancelled provisions of previously negotiated collective agreements, the Committee requests the Government to amend these two acts so as to bring them in line with Convention No. 87, and once again requests the Government to abstain from adopting such legislation in the future. The Committee requests to be kept informed of developments in this respect.

(c) Noting that the Government did not hold full and frank consultations with representative organizations for the elaboration and adoption of the Health Sector Partnerships Agreement Act and of the Coastal Ferry Act, the Committee once again requests it to hold such consultations in future where workers' rights of freedom of association and collective bargaining may be affected.

(d) The Committee recalls that the technical assistance of the ILO is at the Government's disposal if it so wishes.