Unions Take Additional Legal Action Over Bargaining Rights

By Kathryn May, Ottawa Citizen - May 16, 2015

High-tension contract negotiations around a new sick leave and disability scheme for Canada's public servants are expanding to include legal action over workers' constitutional rights to fair collective bargaining.

On Friday, the 18 federal unions kicked off a plan for a "co-ordinated" legal assault by filing a complaint with the International Labour Organization (ILO), alleging the Conservative government is flouting the laws and conventions on workers' rights that Canada agreed to uphold.

The unions also issued a statement "reaffirming" a solidarity pact they signed a year ago when the current round of bargaining began.

That pact was originally aimed at developing a common bargaining strategy on sick leave, but now has been extended to a "comprehensive legal plan" to challenge the constitutionality of the Conservative government's legislation on collective bargaining.

"We are united and even more determined to defend the constitutional rights of our members," said Ron Cochrane, the union co-chair of the joint union-management National Joint Council.

"We are taking all steps at our disposal including appealing to the body that enforces international conventions on labour rights."

The ILO complaint is aimed at Bill C-4, the 2013 omnibus budget bill that brought sweeping changes to the Public Service Labour Relations Act and rewrote the rules for collective bargaining in the public service.

The unions also are expected to launch another complaint with the Geneva-based ILO when the most recent budget bill, C-59, is passed. That legislation gives the government the power to unilaterally change the sick-leave benefits now enshrined in contracts. This would pave the way for a new short-term disability plan that's not as generous for many workers as existing benefits.

"Bill C-59 is all about gutting constitutionally protected bargaining rights to force us to accept a 'go to work sick' plan by threatening to impose it if we do not agree," said Cochrane.

"It runs completely contrary to the Public Service Labour Relations Act and is a violation of the Charter of Rights and Freedoms. And, like Bill C-4, it contravenes international conventions. We will not be intimidated by the federal government's bully tactics."

Canada was a founding member of the ILO, the United Nations agency that deals with labour issues, particularly international rules and standards.

The ILO will investigate whether the government lived up to its international obligations, but it can't change domestic laws or impose sanctions. A knuckle rap by the ILO, however, can ramp up the moral case over a policy among member states.

The complaint alleges that C-4 reforms violate ILO convention 87, which Canada ratified in 1972 to protect free collective bargaining and the right to strike.

C-4 changed the Public Service Labour Relations Act, which was originally passed in 1967 to give public servants the right to unionize and bargain collectively.

The reforms effectively put the government in the driver's seat when determining which unions get to strike and which ones go to arbitration to resolve contract disputes. The changes also give the government the exclusive right to decide which workers are essential and can't strike. The changes also reduce the independence of arbitrators and ensure they base awards on the government's budgetary priorities.

In the complaint, unions argue that C-4 violates convention 87 in various ways. The government's power to determine who is essential and unable to strike has resulted in many non-essential workers designated as essential, and has also denied the right to strike, they argue.

Essential workers who can't strike are also denied "impartial and independent" arbitration because arbitrators must base their decisions on the conditions imposed by the government. They are also forced to perform the non-essential duties that are part of their jobs, which undermines the impact of any strike by their non-essential colleagues, the unions say.

The unions are buoyed by recent decisions of the Supreme Court of Canada that have profoundly changed the landscape for labour rights and collective bargaining. In a key ruling, it granted an appeal by the Saskatchewan Federation of Labour of the province's controversial essential-services law, which restricted which workers could strike.

The changes the federal Conservatives implemented to collective bargaining in Bill C-4 are almost identical to the Saskatchewan legislation – particularly the provisions dealing with essential services.